

WEDNESDAY, FEBRUARY 7, 1979



highlights

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE:** As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

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(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list, has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

FCC—Radio operator licensing program. 1733; 1-8-79
 USDA/AMS—Perishable agricultural commodities; misrepresentation or misbranding; correction 59470; 12-21-78
 [Originally published at 43 FR 4964, February 7, 1978]

Next Week's Deadlines for Comments On Proposed Rules

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Agricultural Marketing Service—
 Cranberries grown in Mass., et al.; comments by 2-12-79 5139; 1-25-79
 Milk in Tennessee Valley marketing area; comments by 2-12-79 4696; 1-23-79
 Recommended decision on proposed amendments to tentative marketing agreements and written orders; comments by 2-15-79 6107; 1-31-79
 Food and Nutrition Service—
 Nutritional requirements, National School Lunch Program; comments by 2-15-79. 37165; 8-22-78
 National School Lunch Program; regulation of competitive foods; comments by 2-16-79 58780; 12-15-78
 Grazing and livestock use on National Forest system; procedures for determining annual grazing fees; comments by 2-12-79 58387; 12-14-78
 Office of the Secretary—
 Natural gas, essential agricultural uses, availability of draft environmental statement; comments by 2-16-79 5668; 1-29-79

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—
 Standardization of fishery products; comments by 2-13-79 53047; 11-15-78

ENERGY DEPARTMENT

Economic Regulatory Administration—
 Oil import allocations for 1979-1980; comments by 2-15-79 1896; 1-8-79
 Retail gasoline dealers permitted to pass through increased costs from installation of vapor recovery systems and rent increases; comments by 2-15-79. 60868; 12-29-78
 Federal Energy Regulatory Commission—
 Implementation of incremental pricing provisions of the Natural Gas Policy Act of 1978; comments by 2-12-79 6133; 1-31-79

ENVIRONMENTAL PROTECTION AGENCY

State implementation plan requirements, State and Federal administrative orders permitting a delay in compliance;
 Connecticut Department of Environmental Protection; comments by 2-14-79. 3057; 1-15-79

Indiana; comments by 2-12-79 2402; 1-11-79
 New York; Nassau Recycle Corp.; comments by 2-12-79 2615; 1-12-79
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 North Carolina; comments by 2-16-79 (2 documents) 3528; 1-17-79
 Attainment status designations: Florida and North Carolina, air quality control regions, criteria, and control techniques; comments by 2-12-79 2617; 1-12-79
 Exemption from requirement of a tolerance for an inert ingredient in pesticide formulations; comments by 2-16-79 3529; 1-17-79
 Maine, approval and promulgation of implementation plans; proposed rulemaking: Maine regulations for air quality surveillance and new source review; comments by 2-12-79 2614; 1-12-79
 North Carolina Environmental Management Commission; comments by 2-14-79. 3057; 1-15-79
 Preconstruction review for large new or modified air pollution sources; emission offset interpretative ruling; comments by 2-15-79 3298; 1-16-79

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FM broadcast stations; table of assignments:
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 Grand Rapids, and Hibbing, Minn.; comments by 2-15-79 58205; 12-13-78
 Hadley, N.Y.; comments by 2-12-79. 59405; 12-20-78
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 Scottville, Mich.; comments by 2-12-79. 60310; 12-27-78
 Vinita, Okla.; comments by 2-14-79. 60308; 12-27-78
 Television broadcast station in San Diego, Calif., reply comments by 2-16-79. 4501; 1-22-79
 [Originally published at 43 FR 46049; 9-22-79]

FEDERAL RESERVE SYSTEM

Truth in lending; exception to general rescission requirements; comments by 2-15-79. 3257; 1-16-79
 [Originally published at 43 FR 56877; 12-5-78]

FEDERAL TRADE COMMISSION

Food advertising (Phase I), trade regulation rate; comments by 2-12-79 5158; 1-25-79
 Trade regulation rule on used motor vehicles; comment period extended to 2-13-79. 974; 1-3-79—4499; 1-22-79
 [First published at 43 FR 52729, 11-14-78]

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—
 Accidental radioactive contamination of human food and animal feeds; recommendations; comments by 2-13-79. 58790; 12-15-78
 Asparagus; standards of identity and quality; comments by 2-13-79 58580; 12-15-78
 Canned grapefruit juice; standards of identity and fill of container; comments by 2-13-79 58575; 12-15-78
 Injectable animal drugs; intent regarding sterility and pyrogenicity; comments by 2-13-79 58591; 12-15-78
 Health Care Financing Administration—
 Medicare; organ procurement and histocompatibility testing and home dialysis equipment; comments by 2-12-79. 58370; 12-14-78
 Medicare; payment for durable medical equipment; comments by 2-12-79. 58390; 12-14-78
 National Institutes of Health—
 Recombinant DNA research, proposed actions under guidelines (2 documents); comments by 2-14-79 3226-3227; 1-15-79

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—
 Indian housing; comments by 2-12-79. 2502; 1-11-79

INTERIOR DEPARTMENT

Fish and Wildlife Service—
 Endangered Species Convention; procedure for changing appendices; comments by 2-15-79 3384; 1-16-79
 Endangered Species Convention; foreign proposals to amend list of species protected; comments by 2-19-79 3385; 1-16-79
 Migratory bird hunting, proposal describing areas in which nontoxic shot would be required in water fowl hunting seasons commencing in 1979; comments by 2-12-79 2629; 1-12-79
 Land Management Bureau—
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Exemption of certain designated operators from section 11343 (formerly section 5(2)) of the Interstate Commerce Act; comments by 2-16-79 3531; 1-17-79
 Revision of levels of revenues which define the classes of motor carriers of property; comments by 2-12-79 2407; 1-11-79

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 Beryllium, reopening of rulemaking record; comments by 2-12-79 2604; 1-12-79

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Nuclear generating stations, general considerations and issues of significance on the evaluation of alternative sites; comments by 2-12-79 59091; 12-19-78

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Restrictions on private carriage of letters; revisions in comprehensive standards for permissible private carriage of letters; comments by 2-12-79 ... 60615; 1-28-78

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Electrical Systems; comments by 2-12-79 60850; 12-28-78

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Federal-aid projects; preconstruction procedures and plans, specifications, and estimates; comments by 2-13-79. 58563; 12-15-78

Materials Transportation Bureau—

Packaging specifications for intermodal portable tanks; comments by 3-15-79 58050; 12-11-78

Provisions for transportation of hazardous materials aircraft; comments by 2-15-79 57928; 12-11-78

Testing of highly volatile liquid pipelines; comments by 2-15-79 52504; 11-13-78

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Internal Revenue Service—

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Transitional rules for qualified stock options granted after May 20, 1976; comments by 2-16-79 58830; 12-18-78

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Upper Mississippi River Basin Commission; public participation in Upper Mississippi River System Master Plan; comments by 2-12-79 2956; 1-12-79

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Food and Nutrition Service—

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Pennsylvania Advisory Committee, Philadelphia, Pa. (open), 2-15-79.4750; 1-23-79

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National Oceanic and Atmospheric Administration—

Fishermen's Contingency Fund, Boston, Mass. (open), 2-13-79..5165; 1-25-79

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National Telecommunications and Information Administration—

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Army Department—

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Office of the Secretary—

DOD Advisory Group on Electron Devices, Working Group C, New York, N.Y. (closed), 2-15-79 4007; 1-19-79

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Food and Drug Administration—

Clinical Chemistry Section and Hematology Section of the Clinical Chemistry and Hematology Devices Panel, Silver Spring, Md. (open), 2-16-79 3314; 1-16-79

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Drug Abuse Advisory Committee, Rockville, Md. (open), 2-12 and 2-13-79 3314; 1-16-79

Drug Abuse Advisory Committee Ad Hoc Subcommittee to Study "Effects of Scheduling," Bethesda, Md. (open), 2-11-79 3314; 1-16-79

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Heptotoxicity Subcommittee of the Gastrointestinal Drugs Advisory Committee, Rockville, Md. (open), 2-16-79 3314; 1-16-79

National Institutes of Health—

Allergy and Immunology Research Grant Study Section, La Jolla, Calif. (partially open), 2-16 thru 2-18-79 2023; 1-9-79

Applied Physiology and Orthopedics Research Grants Study Section, San Francisco, Calif. (partially open), 2-16 thru 2-19-79 2023; 1-9-79

Neurological Disorders Program—Project A Committee, Phoenix, Ariz. (open) 2-10 through 2-12-79 1800; 1-8-79

Bio-Psychology Research Grants Study Section, Washington, D.C. (partially open), 2-13 thru 2-16-79 2023; 1-9-79

Board of Scientific Counselors, Bethesda, Md. (partially open), 2-14 thru 2-16-79 5002; 1-24-79

Cell Biology Research Grants Study Section, San Diego, Calif. (partially open), 2-16 thru 2-18-79 2023; 1-9-79

Neurological and Communicative Disorders Program—Project Review B Committee, Silver Spring, Md. (open), 2-15 through 2-17-79 1800; 1-8-79

Recombinant DNA Advisory Committee, Bethesda, Md. (open), 2-15 and 2-16-79 3226; 1-15-79

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Socorro District Grazing Advisory Board, Socorro, N.M. (open), 2-14-79 61023; 12-29-78

JUSTICE DEPARTMENT

United States Circuit Judge Nominating Commission, Eighth Circuit Panel, Minneapolis, Minn. (closed), 2-17-79 4543; 1-22-79

United States Circuit Judge Nominating Commission, Charlotte, N.C. (closed), 2-15 through 2-17-79 3792; 1-18-79

Western Fifth Circuit Panel, U.S. Circuit Judge Nominating Commission, Baton Rouge, La., 2-13 through 2-15-79 5527; 1-26-79

[See also 44 FR 3327, 1-16-79]

METRIC BOARD

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DOE/NSF Nuclear Science Advisory Committee, 1979 Facilities Subcommittee, Washington, D.C. (partially open), 2-12 through 2-14-79 5543; 1-26-79

Media Arts Panel (AFI/Archival) Washington, D.C. (closed), 2-13-79 5731; 1-29-79

Molecular Biology Subcommittee, Washington, D.C. (closed), 2-12 and 2-13-79 5544; 1-26-79

Oceans and Atmosphere National Advisory Committee, Washington, D.C. (open), 2-12 and 2-13-79 5541; 1-26-79

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Subcommittee on Metallurgy and Materials, Materials Research Advisory Committee, Washington, D.C. (closed), 2-15 and 2-16-79 5543; 1-26-79

Subcommittee on Public Understanding of Science, Science and Society Advisory Committee, Washington, D.C. (closed), 2-15 and 2-16-79 5544; 1-26-79

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Region IV Advisory Council Executive Board, Atlanta, Ga. (open), 2-14-79 5039; 1-24-79

STATE DEPARTMENT

Agency For International Development—

Joint Committee for Agricultural Development of the Board for International Food and Agricultural Development, Arlington, Va. (open), 2-12 and 2-13-79 5041; 1-24-79

Joint Research Committee of the Board for International Food and Agricultural Development, Arlington, Va. (open), 2-13 and 2-14-79 5040; 1-24-79

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Washington, D.C. (open), 2-13-79 5040; 1-24-79

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Washington, D.C. (open), 2-15-79 5040; 1-24-79

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Federal Aviation Administration—

Air Traffic Procedures Advisory Committee, Washington, D.C. (open), 2-16-79 5234; 1-25-79

Radio Technical Commission for Aeronautics (RTCA); Special Committee 134—Electronic Test Equipment for General Application, Arlington, Va. (open), 2-15 and 2-16-79 5234; 1-25-79

Radio Technical Commission for Aeronautics (RTCA); Separation Study Review Group, Washington, D.C. (open), 2-13 and 2-14-79 3807; 1-18-79

National Highway Traffic Safety Administration—

Advanced Automotive Technology, Boston, Mass. (open), 2-13 and 2-14-79 4547; 1-22-79

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ENERGY DEPARTMENT

State Energy Conservation Plans, Washington, D.C., 2-14-79 4562; 1-22-79

Economic Regulatory Administration—

Administrative Procedures and Sanctions, Subpoenas, Special Report Orders, and Investigations, Washington, D.C., 2-15-79 4346; 1-19-79

Oil Import allocations for 1979-1980, Washington, D.C., 2-14-79 1896; 1-8-79

Powerplant and Industrial Fuel Use Act of 1978, implementation, Salt Lake City, Utah, 2-14-79 3721; 1-18-79

Powerplant and Industrial Fuel Use Act of 1978, implementation, Salt Lake City, Utah, 2-14 and 2-15-79 5808; 1-29-79

Hazardous guidelines and provisions, St. Louis, Mo., 2-14 thru 2-16-79 58946; 12-18-78

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National Institute of Corrections Advisory Board, Houston, Tex., 2-15 and 2-16-79 4022; 1-19-79

List of Public Laws

NOTE: No public laws have been received by the Office of the Federal Register for assignment of law numbers and inclusion in today's listing.

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Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.

Deadlines for Comments on Proposed Rules:

EPA—State and local assistance for restoring publicly owned freshwater lakes; comments by 3-30-79 5685; 1-29-79

HEW/PHS—State Medical Facilities Plan; comments by 4-3-79 6842; 2-2-79

Applications Deadlines:

ACTION—Competitive demonstration grants under Special Volunteer Programs; availability for fiscal year 1979; apply by 4-30-79 5919; 1-30-79

HEW/HCFA—Medicare and Medical hospice projects; extension of applications closing date to 2-28-79 5944; 1-30-79

HSA—Project grants for home health services; availability of funds; apply by 3-1, 5-1, 6-1-79 for various programs 5945; 1-30-79

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PHS—Curriculum Development grants; applications by 4-23-79 6520; 2-1-79
Justice/LEAA—Competitive research grant solicitation to support a study of the movement of confined offenders between mental health and correctional facilities; draft proposals by 4-1-79.

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HEW/NIH—Cancer Control Merit Review Committee of the National Cancer Institute, Silver Spring, Md. (partially open), 2-23-79..... 6784; 2-2-79

National Institute of Child Health and Human Development: Maternal and Child Health Research Committee, Bethesda, Md. (open), 3-22 and 3-23-79.

6786; 2-2-79

Population Research Committee, Bethesda, Md. (open), 3-21 through 3-23-79..... 6786; 2-2-79

National Institute of Dental Research, Special Grants Review Committee, Bethesda, Md. (open), 3-6 and 3-7-79.

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NFAH—Architecture, Planning, and Design Advisory Panel, review, discussion, evaluation, and recommendation on applications for financial assistance, Washington, D.C. (closed), 2-22 and 2-23-79..... 6523; 2-1-79

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NSF—Molecular Biology Subcommittee, Washington, D.C. (closed), 2-22 and 2-23-79..... 6815; 2-2-79

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Electrical Sciences and Analysis of the Advisory Committee for Engineering Subcommittee, Washington, D.C. (partially open), 2-20 and 2-21-79 ... 6816; 2-2-79

Social and Developmental Psychology Subcommittee, Washington, D.C. (closed), 2-22 and 2-23-79 6816; 2-2-79

Other Items of Interest:

HEW/HDSO—Proposal to develop provisions for grants for state and community programs on aging 6155; 1-31-79

Proposal to develop program of grants to Indian tribes for community programs and multipurpose senior centers.

6155; 1-31-79

NIE—Decision to develop research grants program on legal and governmental studies in education..... 6156; 1-31-79

LSC—Comments solicited for the following grant applications:

Blue Ridge Legal Aid Planning Group in Harrisonburg, Virginia to serve Augusta, Rockingham, Highland Counties and Harrisonburg, Staunton and Waynesboro Cities..... 6814; 2-2-79

Client Centered Legal Services of Southwest Virginia in Clintwood, Virginia to serve Lee, Scott, Wise, Dickenson, Russell, Tazewell and Buchanan Counties and Norton City 6814; 2-2-79

Kansas Legal Services in Topeka, Kansas to serve Sherman, Wallace, Thomas, Logan, Greeley, Wichita, Scott, Lane, Ness, Norton, Graham, Phillips, Roosk,

Ellis, Rush, Russell, Barton, Stafford, Pratt, Barber, Rice, Reno, Ottawa, Riley, Geary, Jefferson, Johnson, Linn, Lyon, Nemaha, Osage, Pottawatomie, and Wabaunsee Counties 6814; 2-2-79

Legal Aid Society of Calhoun County in Battlecreek, Michigan to serve Branch County 6814; 2-2-79

Legal Aid Society of Roanoke Valley in Roanoke, Virginia to serve Rockbridge and Bath Counties and Lexington and Buena Vista Cities..... 6814; 2-2-79

Legal Aid of Western Michigan in Grand Rapids, Michigan to serve Montcalm and Ionia Counties..... 6814; 2-2-79

Legal Aid Society in Omaha, Nebraska to serve Antelope, Pierce, Madison, Boone, Nance, Platte, and Colfax Counties 6813; 2-2-79

Legal Services of Southeast Nebraska in Lincoln, Nebraska to serve Polk, York, Fillmore, Thayer, Jefferson, Cass, Pawnee, Richardson, and Nemaha Counties 6814; 2-2-79

Upper Peninsula Legal Services in Sault Ste. Marie, Michigan to serve Leelanau, Benzie, Wexford, Mainster and Missaukee Counties..... 6814; 2-2-79

Virginia Legal Aid Society in Lynchburg, Virginia to serve Amherst, Southampton, Isle of Wright Counties and Franklin and Suffolk Cities..... 6814; 2-2-79

Western Nebraska Legal Services in Scottsbluff, Nebraska to serve Adams, Merrick, Hamilton, Howard, Sherman, Kearney, Phelps, Franklin and Gospor Counties 6813; 2-2-79

presidential documents

Title 3—
The President

Proclamation 4637 of February 5, 1979

Save Your Vision Week, 1979

By the President of the United States of America

A Proclamation

Good eyesight, like so many of life's blessings, is too often taken for granted. Today, millions of Americans must cope with the burden of impaired vision. In many of these cases, visual loss could have been prevented had only simple precautions been taken.

Through periodic eye examinations, for example, certain potentially blinding and disabling eye conditions can often be found in time to be cured or arrested. Regular eye examinations are particularly important for children who may not realize that their vision has been impaired. For some people who have already lost vision, sight can be restored through modern eye care. Special aids and magnifiers can frequently help the partially-sighted make the most of their remaining vision.

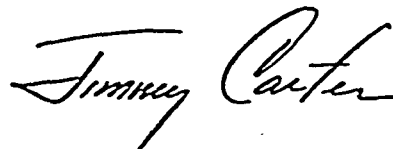
Besides taking advantage of professional eye care services, there is much we can do on our own to help save sight. We can protect our eyes from accidents at work and during recreational activities. We can encourage the sensible use of household products, appliances, and cosmetics and avoid abuse of drugs and alcohol. And we can be alert to the signs of eye problems among family and friends. With proper care and attention, more than half of the serious vision problems that affect both young and old can be prevented.

To focus the attention of all Americans on the importance of good vision, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629, 36 U.S.C. 169a), has requested the President to proclaim the first week of March of each year as Save Your Vision Week.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, designate the week beginning March 4, 1979, as Save Your Vision Week. I urge all Americans to observe this period by considering what they can do to take care of their eyes and protect them from disease and injury. I invite vision care professionals, the communications media, educators, and all public and private organizations which support sight conservation to participate in activities which will teach Americans about eye care and encourage them to preserve or make the most of their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of February, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

[FR Doc 79-4321
Filed 2-5-79; 2:55 pm]
Billing code 3195-01-M



rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-02-M]

Title 7—Agriculture

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Docket Nos. AO-23-A51, AO-86-A38]

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

PART 1065—NEBRASKA-WESTERN IOWA MARKETING AREA

Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changes the funding rate for the advertising and promotion program of each order from a fixed level to a rate tied to the level of producers' pay prices in each market. The funding level is increased from five cents to an initial level of eight cents per hundredweight. The changes are necessary to restore the promotional effort in these markets to the level initially contemplated by producers and to keep the funding rate current with changes in the economy. The action is based on industry proposals considered at a public hearing held October 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of hearing: Issued September 29, 1978, published October 4, 1978 (43 FR 45881).

Recommended decision: Issued December 15, 1978, published December 21, 1978 (43 FR 59511).

Final decision: Issued January 24, 1979, published January 30, 1979.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas, and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the orders partially effective not later than February 15, 1979. This is necessary so that producers can be notified of the new assessment rate prior to the time the new rate becomes effective.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Program Operations, was issued December 15, 1978, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued January 24, 1979. The changes effected by this order will require no preparation or alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the orders partially effective not later than February 15, 1979, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the *FEDERAL REGISTER*. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended; and

(3) The issuance of the order amending the orders relative to provisions of the advertising and promotion program is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Greater Kansas City and Nebraska-Western Iowa marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.61 is revised to read as follows:

§ 1064.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute in the following manner the "uniform price" (and "weighted average price") per hundredweight of milk of 3.5 percent butterfat content that was received from producers:

(a) Combine into one total the values computed pursuant to § 1064.60 for all handlers who filed the reports prescribed by § 1064.30 for the month and who made the payments pursuant to §§ 1064.71 and 1064.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1064.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1064.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1064.121(e). The result shall be the "uniform price" for milk received from producers.

§ 1064.71 [Amended]

2. In § 1064.71(a)(2)(ii), the words "plus 5 cents" are deleted.

§ 1064.73 [Amended]

3. In § 1064.73(d)(2), the reference "§ 1064.61(a)" is changed to read "§ 1064.61."

§ 1064.75 [Amended]

4. In § 1064.75, the reference "§ 1064.61(a)" in paragraph (a) is changed to read "§ 1064.61" and the words "plus 5 cents" in paragraph (b) are deleted.

§ 1064.76 [Amended]

5. In § 1064.76(a)(4), the words "plus 5 cents" are deleted wherever they appear.

§ 1064.113 [Amended]

6. In the section numbered as § 1064.1134, the section number in the heading is changed to read "§ 1064.113."

7. In § 1064.120, the reference "§ 1064.61(a)(4)" in paragraph (d) is changed to read "§ 1064.121(b)" and paragraph (c) is revised to read as follows:

§ 1064.120 Procedure for requesting refunds.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1064.121(b). Such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September was a producer under another order with an advertising and promotion program if the refund notification period under the other order was the same as under this order and if the funding rate under the other order was at least equal to the funding rate under this order.

8. In § 1064.121, the introductory text of paragraph (b) and paragraph (b)(2) and (3) are revised and new paragraphs (e) and (f) are added as follows:

§ 1064.121 Duties of the market administrator.

(b) Each month set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

(2) Refund to producers the amount of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1064.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section by the hundredweight of such producer's milk

pooled for which deductions were made pursuant to this paragraph for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "uniform prices" for the last quarter of the preceding year by 0.75 percent and rounding the result to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.61 is revised to read as follows:

§ 1065.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute in the following manner the "uniform price" (and "weighted average price") per hundredweight of milk of 3.5 percent butterfat content that was received from producers:

(a) Combine into one total the values computed pursuant to § 1065.60 for all handlers who filed the reports prescribed by § 1065.30 for the month and who made the payments pursuant to §§ 1065.71 and 1065.73 for the preceding month;

(b) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1065.75;

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1065.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1065.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

The result shall be the "weighted average price."

(g) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1065.121(e). The result shall be the "uniform price" for milk received from producers.

§ 1065.71 [Amended]

2. In § 1065.71(a)(2)(ii), the word "uniform" is changed to read "weighted average" and the words "plus 5 cents" are deleted.

3. In § 1065.75, paragraph (c) is revised to read as follows:

§ 1065.75 Plant location adjustment for producers and on nonpool milk.

(c) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the weighted average price shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1065.76 [Amended]

4. In § 1065.76(a)(4), the words "uniform price plus 5 cents" are changed to "weighted average price" wherever they appear.

5. In § 1065.120, the reference "§ 1065.61(e)" in paragraph (d) is changed to read "§ 1065.121(b)" and paragraph (c) is revised to read as follows:

§ 1065.120 Procedure for requesting refunds.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1065.121(b). Such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September was a producer under another order with an advertising and promotion program if the refund notification period under the other order was the same as under this order and if the funding rate under the other order was at least equal to the funding rate under this order.

6. In § 1065.121, the introductory text of paragraph (b) and paragraph (b) (2) and (3) are revised and new paragraphs (e) and (f) are added as follows:

§ 1065.121 Duties of the market administrator.

(b) Each month set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

(2) Refund to producers the amount of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1065.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section by the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such calendar quarter less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "uniform prices" for the last quarter of the preceding year by 0.75 percent and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Effective date. The order provisions set forth herein shall become effective April 1, 1979, except that the provisions amending § 1064.121 (e) and (f) and § 1065.121 (e) and (f) shall become effective on February 15, 1979.

Signed at Washington, D.C., on February 1, 1979.

P. R. "BOBBY" SMITH,
Assistant Secretary for
Marketing Services.

[FR Doc. 79-4179 Filed 2-6-79; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

[Reg. ER-1091; Docket No. 29044; Amdt. 11]

PART 252—PROVISION OF DESIGNATED "NO-SMOKING" AREAS ABOARD AIRCRAFT OPERATED BY CERTIFICATED AIR CARRIERS

Final Rule; Correction

AGENCY: Civil Aeronautics Board.

ACTION: Erratum to final rule.

SUMMARY: In FR Doc. 79-2579 footnote 24 on page 5074 of this regulation (44 FR 5071, Jan. 25, 1979), was inadvertently left in. As the footnote reads it is incorrect because the provision to require that "no-smoking" areas consist of a minimum of two rows was adopted. Therefore footnote 24 should be deleted.

DATES: Effective: February 23, 1979. Adopted: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5444.

Dated: January 29, 1979.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR
Secretary.

[FR Doc. 79-4165 Filed 2-6-79; 8:45 am]

[6320-01-M]

[Reg. ER-1101; ER Amdt. No. 21]

PART 291—DOMESTIC CARGO TRANSPORTATION

Editorial Amendment

AGENCY: Civil Aeronautics Board.

ACTION: Editorial amendment.

SUMMARY: The amendment corrects three lettering errors in the CAB's

rules for domestic cargo transportation. This editorial amendment is issued under the delegated authority from the CAB to its General Counsel in 14 CFR §385.19. Procedures for review of this amendment are found in Subpart C of Part 385 of the Organization Regulations (14 CFR §§385.50-385.54).

DATES: Effective: February 27, 1979.
Adopted: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5442.

The Board amends Part 291 of its Economic Regulations (14 CFR Part 291) as follows:

§ 291.11 [Amended]

1. Paragraphs (d) through (g) of § 291.11 are re-designated as paragraphs (c) through (f), respectively.

2. Re-designated paragraph (d)(2) of § 291.11 is amended so that the reference to paragraph (a)(1) reads paragraph (d)(1).

§ 291.22 [Amended]

3. Paragraph (b)(2) of § 291.22 is amended so that Form 29-D reads Form 291-D.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; 49 U.S.C. 1324 (note).)

By the Civil Aeronautics Board:

PHILIP J. BAKES, Jr.,
General Counsel.

[FR Doc. 79-4178 Filed 2-6-79; 8:45 am]

[1505-01-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER J—HIGHWAY SAFETY

[FHWA Docket No. 79-11]

PART 922—SAFER OFF-SYSTEM ROADS PROGRAM

Amendment; Republication

NOTE.—This document originally appeared in the FEDERAL REGISTER for Thursday, February 1, 1979. It is reprinted in its entirety because of an error in printing.

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this document in order to provide guidance and establish procedures for administering the safer off-system roads program in accordance with Section 168(d) of the Surface Transportation Assistance Act of 1978.

EFFECTIVE DATE: February 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. James Rummel, Office of Highway Safety (202/426-2131), or Mrs. Kathleen S. Markman, Office of the Chief Counsel (202/426-0346), Federal Highway Administration, United States Department of Transportation, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday-Friday.

SUPPLEMENTARY INFORMATION:

On November 6, 1978, the President signed into law the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689. Section 168(d) of the Act amended 23 U.S.C. § 219(c) which necessitates an amendment of the regulations implementing the safer off-system roads program. The present regulations governing the safer off-system program require that the States give special consideration to low-cost safety projects when developing a program of safer off-system projects. The new legislation requires that at least 50 percent of the funds obligated in this program by a State in any fiscal year shall be obligated for highway safety improvement projects. This will help assure that necessary safety improvements are undertaken by the States and local governments on roads not located on any Federal-aid system. At present, collectively the States are already obligating almost 55 percent of the safer off-system funds for safety.

Accordingly, the Federal Highway Administration hereby amends Part 922, Chapter I of Title 23, Code of Federal Regulations as set forth below.

1. Section 922.5 is amended to read as follows:

§ 922.5 Objective.

The principal objective of the Safer Off-System Roads (SOS) program is to construct, reconstruct, or otherwise improve off-system roads and streets with special emphasis on the implementation of highway safety improvement projects.

2. Section 922.9 is amended by revising paragraph (a) to read as follows:

§ 922.9 Distribution of funds.

(a) Each SHA shall make funds apportioned under this program available throughout the State on a fair and equitable basis. Not less than 50 per-

cent of the funds obligated by the State in any fiscal year for this program shall be obligated for highway safety improvement projects.

Each SHA shall ensure that projects are selected, designed, and constructed in a manner which will not discriminate against any person or community on the grounds of race, religion, color, national origin, or sex.

NOTE.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044. (23 U.S.C. 101(e), 219 and 315; 49 CFR 1.48(b).)

Issued on: January 22, 1979.

KARL S. BOWERS,
Federal Highway Administrator.
[FR Doc. 79-3438 Filed 1-31-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-5129]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Ad-

ministrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410. 202-755-5581 or toll-free, line 800-424-8872.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on

the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial as-

sistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

State	County	Location	Community number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
California	Merced	Unincorporated Areas	060188	January 17, 1979, suspension withdrawn.	8-23-74
Do	Santa Clara	Monte Sereno, City of	060345-A	do	5-24-74 & 3-7-75
Do	San Bernardino	Redlands, City of	060279-A	do	5-17-74 & 11-21-75
Colorado	Larimer	Estes Park, Town of	080193	do	9-19-75
Connecticut	Hartford	Glastonbury, Town of	090124-B	do	4-20-73 & 11-19-76
Do	New Haven	West Haven, City of	090092	do	5-31-74
Delaware	Kent	Little Creek, Town of	100015-A	do	8-9-74 & 12-12-75
Florida	Orange	Eatonville, Town of	120182-A	do	7-19-74 & 5-14-76
Georgia	Clarke	Unincorporated Areas	130243	do	3-21-75 & 10-3-75
Do	Cobb	do	130052	do	10-3-75
Do	Rockdale	Conyers, City of	130213-A	do	6-28-74 & 10-22-76
Do	Troup	LaGrange, City of	130177	do	4-2-76
Do	Houston	Warner Robins, City of	130111-A	do	6-14-74 & 3-26-76
Illinois	Jo Daviess	Galena, City of	175168-A	do	7-20-73
Do	Cook	Northbrook, Village of	170132	do	2-22-74 & 8-13-76
Indiana	Lake	Highland, Town of	185176-B	do	5-19-72
Do	Brown	Nashville, Town of	180018-B	do	
Kansas	Wyandotte	Bonner Springs, City of	200361	do	12-28-73
Kentucky	Boyd	Catlettsburg, City of	210018	do	5-3-74 & 2-20-76
Do	Harlan	Harlan, City of	210102-A	do	3-16-73
Michigan	Kent	Grand Rapids, City of	260108	do	4-13-73
Do	Saginaw	Zilwaukee, Township of	260286	do	7-19-74
Minnesota	Carver	Carver, City of	275234	do	9-12-72
Do	Clay	Unincorporated Areas	275235	do	
Missouri	Madison	Fredericktown, City of	290221	do	6-14-74
Do	Jackson	Greenwood, City of	290711	do	6-4-76
Do	Jackson	Sugar Creek, City of	290178-A	do	12-17-76
North Carolina	Durham	Durham, City of	370086-A	do	2-1-74 & 8-13-76
New York	Tompkins	Dryden, Village of	360847-A	do	6-7-74 & 5-28-76
Do	Cattaraugus	Hinsdale, Town of	360077-A	do	10-15-76
Do	Westchester	Pelham Manor, Village	360926-A	do	5-10-74 & 1-16-76
Do	Onondaga	Pompey, Town of	360590-A	do	5-31-74 & 7-30-76
Ohio	Sandusky	Unincorporated Areas	390466	do	1-13-78
Pennsylvania	Montgomery	Bridgeport, Borough of	420948-A	do	1-16-74
South Carolina	Greenville	Simpsonville, City of	450092-B	do	5-17-74
Vermont	Windsor	Woodstock, Town of	590160	do	8-9-74
Virginia		Covington, City of	510040-A	do	5-17-74 & 4-16-76
Do	Dinwiddle	Unincorporated Areas	510187	do	11-15-74
Wisconsin	Buffalo	Alma, City of	555540-B	do	12-12-72
North Dakota	Richland	Brandenburg, Township of	383622-New	January 26, 1979, emergency.	

State	County	Location	Community number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Alabama.....	Choctaw.....	Gilbertown, Town of.....	010034.....	January 29, 1979, emergency.	10-15-70
Michigan.....	Bay.....	Kawkawlin, Township of.....	260858.....	do.....	12-10-70
Ohio.....	Clinton.....	Unincorporated Areas.....	390764.....	do.....	12-9-77
Texas.....	Ellis.....	Unincorporated Areas.....	480798-A.....	do.....	8-10-77
Missouri.....	Clay.....	Kearney City of.....	290095-B.....	May 21, 1975, emergency, July 17, 1978, regular, January 29, 1979, reinstated.	3-22-74 & 11-14-76

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2080, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 30, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3860 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI 5130]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: The addresses where flood insurance policies can be obtained are published at 24 CFR 1912.7.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is:

(1) For acquisition and construction purposes as defined in Part 1909 of Title 24 of the Code of Federal Regulations and

(2) For property located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided

for acquisition or construction except as authorized by section 202(a) of the Act unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association (NFIA) servicing company for the State.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community number
Missouri.....	Andrew.....	Savannah, City of.....	December 21, 1978, emergency.	11-5-76.....	290864
Oregon.....	Lincoln.....	DePoe Bay, City of.....	January 11, 1979, emergency.	.....	410203
Texas.....	Montgomery.....	Roman Forest, Town of.....	do.....	.....	481538
Pennsylvania.....	Westmoreland.....	Ligonier, Township of.....	September 6, 1974, emergency, September 1, 1978, regular, September 1, 1978, suspended, January 10, 1979, reinstated.	9-6-74 & 7-23-76.....	420884-B
Idaho.....	Ada.....	Garden City, City of.....	January 12, 1979, emergency.	12-17-73.....	160004-A

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 30, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3861 Filed 2-6-79; 8:45 am]

[4210-01-M]

[—Docket No. FI 5131]

**PART 1914—COMMUNITIES ELIGIBLE
FOR THE SALE OF INSURANCE**

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community.

§ 1914.6 List of eligible communities.

nity, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

**FOR FURTHER INFORMATION
CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities of the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance

Administration has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:—

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community number
Kentucky	Lincoln	Unincorporated Areas	December 27, 1978, emergency.	8-26-77	210325
Michigan	Eaton	Onelda, Township of	December 29, 1978, emergency.	1-14-77	260070-A
Arizona	Greenlee	Unincorporated Areas	do	10-25-77	040110-A
Michigan	Shiawassee	Rush, Township of	January 3, 1979, emergency.	8-8-75	260522
Vermont	Bennington	Manchester, Town of	January 28, 1972, emergency, April 3, 1978, regular, May 1, 1978, suspended, December 22, 1978, reinstated.	8-2-74	500015-A
Do.	Addison	New Haven, Town of	October 20, 1972, emergency, April 3, 1978, regular, May 1, 1978, suspended, December 29, 1978, reinstated.	10-25-74	500009-B
Wyoming	Converse	Douglas, Town of	October 2, 1975, emergency, October 17, 1978, regular, October 17, 1978, suspended, December 28, 1978, reinstated.	11-1-74 & 8-27-76	560013-B
Pennsylvania	Monroe	East Stroudsburg, Borough of	March 26, 1974, emergency, September 29, 1978, regular, September 29, 1978, suspended, December 21, 1978, reinstated.	5-24-74 & 6-4-76	429691

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community number
Tennessee	Sevier	Pigeon Forge, City of	November 13, 1971, emergency, September 1, 1972, regular, December 15, 1975, suspended, December 21, 1978, reinstated.	8-31-72	475442-A

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2737, Jan. 24, 1974:

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect of the date indicated.

Issued: January 30, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3862 Filed 2-6-79; 8:45 am]

[4210-01-M]

IDocket No. FI-46271

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Laramie, Albany County, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Laramie, Albany County, Wyoming. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Laramie, Wyo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Laramie, Albany County, Wyoming, are availa-

ble for review at City Manager's Office, 203 South 4th Street, Laramie, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Laramie, Wyoming.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Laramie River	Curtis Street—1100 feet*	7,130
	Curtis Street—460 feet**	7,132
	New Wyoming State Highway 130-230-940 feet**	7,137
	Interstate Highway 80— at centerline.	7,141
Spring Creek	Confluence with Laramie River.	7,130
	Pine Street (approximately 1,308 feet upstream of confluence with Laramie River)—12 feet**.	7,143
	2nd Street—150 feet**	7,152
	9th Street—50 feet**	7,167
	13th Street—60 feet**	7,174
	17th Street—595 feet**	7,180
	Corthell Road—80 feet**	7,195
	Grand Avenue—90 feet**.	7,240
	Corporate Limit 6520 feet upstream of centerline of Grand Avenue, 20 feet downstream of that corporate limit.	7,332
Spring Creek Overflow.	Steele Street—at centerline.	7,182
	26th Street—70 feet*.....	7,221

*Downstream of centerline..

**Upstream of centerline..

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3642 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4291]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Rock Springs, Sweetwater County, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Rock Springs, Sweetwater County, Wyoming. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Rock Springs, Wyoming.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Rock Springs, Sweetwater County, Wyoming, are available for review at City Hall, C and Broadway Street, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Rock Springs, Wyoming.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An

opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bitter Creek	Downstream Corporate Limits	6,219
	300 feet upstream of Tributary 1 confluence	6,223
	Dewar Drive*	6,246
	Elk Street	6,253
	Pilot Butte Avenue	6,258
Tributary 1	Union Pacific Railroad*	6,266
	Interstate Highway 80	6,225
	Extension Dewar Drive*	6,233
Dead Horse Canyon Creek	Second Street*	6,266
	Connecticut Avenue*	6,308
	State Highway 430 (50 feet upstream of centerline)	6,357
Killpecker Creek	Spring Drive (150 feet downstream of centerline)	6,262
	Spring Drive*	6,271
	Interstate Highway 80	6,279
	Corporate Limits	6,295
Sweetwater Creek	Union Pacific Railroad*	6,238
	West Second Street (50 feet downstream of centerline)	6,240
	West Second Street*	6,246
	Corporate Limits	6,247

*Upstream side.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(c)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3643 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-2938]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Helena, Phillips County, Ark.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Helena, Phillips County, Arkansas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Helena, Phillips County, Arkansas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Helena, Phillips County, Arkansas, are available for review at the Helena Municipal Building, 226 Perry Street, Helena, Arkansas.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Helena, Phillips County, Arkansas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or in-

dividuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Main Outlet Ditch	Downstream Corporate Limits	180
	Straub Lane	187
	Missouri Pacific Railroad	188
	Arkansas Street	189
Hickory Alley Ditch	Missouri Street	189
	Miller Street	189
Park Ditch	Adams Street	185
Freedomia Branch	Downstream Corporate Limits	231
	Harcourt Street	236
	Springtown Road	261
Walker Street Ditch	Adams Street Extended	208
Coney Creek	Downstream Corporate Limits	236
	Stone Brook Road	250
	Springdale Road	262
	Upstream Corporate Limits	264
Coney Creek	Downstream Limits	246
Lateral A	Grand Avenue	260
	Valley Drive	274
	Springdale Road	309
	U.S. Route 49	197
Mississippi River	Upstream Corporate Limits	198

Source of flooding	Location	Depth, in feet
Shallow Flooding	Between College Street and Perry Street	3
	Between Porter Street and Missouri Street	2

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3644 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4041]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Goodyear, Maricopa County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Goodyear, Maricopa County, Arizona. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Goodyear, Maricopa County, Arizona.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Goodyear, Maricopa County, Arizona, are available for review at the Office of the Town Manager, 119 North Litchfield Road, Goodyear, Arizona.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Goodyear, Maricopa County, Arizona.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has

resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gila River	Reams Road (Extended)	911
	Bullard Avenue	910
	Confluence with Agua Fria River	924
Agua Fria River	Southern Avenue Extended	924
	Broadway Road	934
Gila River	Reams Road	916
Breakout at Buckeye Canal	Confluence with Gila River	918

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3645 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-44571]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Merced, Merced County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Merced, Merced County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Merced, California.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Merced, are available for review at City Hall, 561 West 18th Street, Merced, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Merced, California.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bear Creek	U.S. Highway 99—50 feet*	163
	Southern Pacific Railroad Spur—30 feet*	165
	Atchison, Topeka and Santa Fe Railway Bridge—30 feet*	169
	R Street Bridge—30 feet*	171
	M Street Bridge—30 feet*	173
	G Street Bridge—20 feet*	175

*Upstream of centerline.

Source of flooding	Location	Depth, in feet
Sheet Flow Area	Intersection of West 11th Street and J Street.	1
	Intersection of Hawk Drive and Heron Way.	1
	Intersection of Lopez Avenue and Sydney Lane.	1
	Intersection of West 7th Street and T Street.	1
	Intersection of West 20th Street and U Street.	1
	Intersection of East 26th Street and Glen Avenue.	1
	Intersection of West 18th Street and J Street.	1
	Intersection of West 26th Street and K Street.	2
	Intersection of East 26th Street and 2nd Avenue.	2
	Intersection of Villa Drive and East 27th Street.	2
	Intersection of East 26th Street and Hawthorn Avenue.	2
	Intersection of East 27th Street and Parsons Avenue.	1
	Intersection of Gerard Avenue and Brimmer Road.	1
	Intersection of Ellen Avenue and Merced Avenue.	1
	Intersection of Rose Avenue and Merced Avenue.	1
	Intersection of Yosemite Park Way and Kelly Avenue.	1
	Intersection of Driftwood Drive and Crystal Spring Avenue.	1

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ponding Area	Intersection of West 19th Street and T Street.	165
	Intersection of West 16th Street and Q Street.	165
	Intersection of West 25th Street and L Street.	172
	Intersection of West 25th Street and U Street.	172
	Intersection of Pierre Court and Loughborough Drive.	166
	Intersection of Blismarck Drive and Sacramento Drive.	165
	Intersection of Conestoga Drive and Sacramento Drive.	165
	South of Atchison, Topeka and Santa Fe Railway Bridge over Black Rascal Creek, and west of Snelling Highway.	161
	South of Black Rascal Creek and north of Bear Creek.	161

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Southeast of Intersection of Snelling Highway and Atchison, Topeka and Santa Fe Railway.	162

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3646 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4396]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Needles, San Bernardino County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Needles, San Bernardino County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Needles, California.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Needles, San Bernardino County, California, are available for review at Department of Public Works, 1111 Bailey Avenue, Needles, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Needles, California.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Colorado River.....	Bridge Road—30 feet upstream of centerline.	478
	North K Street extended.	481
	Depth, feet	
Road Runner Wash.	U.S. Highway 40.....	3*
	Atchison, Topeka and Santa Fe Railroad.	2*
Eagle Pass Wash....	J Street extend.....	2*
Wash B.....	U.S. 95.....	2*
Needles Flood Channel.	Front Street.....	1*
Lillyhill Wash.....	U.S. Highway 40 (downstream).	1*
	U.S. Highway 40 (upstream).	3*
	U.S. Highway 40 (500 feet upstream).	1*
Wash A.....	U.S. Highway 40 (100 feet upstream).	3*
	U.S. Highway 40 (500 feet upstream).	1*

*Shallow Flooding.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule

has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3647 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4397]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Waterford, Stanislaus County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Waterford, Stanislaus County, California.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Waterford, California.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Waterford, are available for review at City Hall, Waterford, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Waterford, California.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C.

4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tuolumne River....	Reinway Avenue extended—50 feet*.	82
	Southern Pacific Railroad Bridge—100 feet*.	80
	Hickman Road Bridge—50 feet*.	80

*Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3648 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4398]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Dacono, Weld County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Dacono, Weld County, Colorado. These base (100-year) flood elevations are the basis for the flood plain management measures that the communi-

ty is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Dacono, Colorado.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Dacono, Weld County, Colorado, are available for review at Town Hall, 512 Cherry Street, Dacono, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Dacono, Colorado.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tri-Area Drainageway.	Eighth Street.....	5,012
Unnamed Tributary of Tri-Area Drainageway.	Confluence with Tri-Area Drainageway.	5,012

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's dele-

gation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
(FR Doc. 79-3649 Filed 2-6-79; 8:45 am)

[4210-01-M]

[Docket No. FI-44001]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Frederick, Weld County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Frederick, Weld County, Colorado. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Frederick, Colorado.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Frederick, Weld County, Colorado, are available for review at Town Hall, 333 5th Street, Frederick, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Frederick, Colorado.

This final rule is issued in accordance with section 110 of the Flood Dis-

aster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tri-Area Drainageway.	First Street.....	4,970
	Frederick Levee.....	4,987

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ
Federal Insurance Administrator.
(FR Doc. 79-3650 Filed 2-6-79; 8:45 am)

[4210-01-M]

[Docket No. FI-44581]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Fort Collins, Larimer County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Fort Collins, Larimer County, Colorado. These base (100-year) flood elevations are the basis for the flood plain man-

agement measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Fort Collins, Colorado.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Fort Collins, are available for review at City Hall, 300 Laporte Avenue, Fort Collins, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Fort Collins, Colorado.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Spring Creek.....	Prospect Road—80 feet*	4,905
	Prospect Road—80 feet**	4,909
	Eleventh Street—40 feet*	4,911
	Eleventh Street—40 feet**	4,914
	1st crossing Colorado and Southern Railroad—20 feet*	4,917
	Welch Street—120 feet*	4,930
	Welch Street—30 feet**	4,937
	Lemay Street—40 feet**	4,949

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Spring Creek Overflow.	Stover Street—80 feet**	4,967
	College Avenue—100 feet**	4,982
	College Avenue—50 feet**	4,988
	Shields Street—40 feet**	5,015
	Drake Road—80 feet**	5,053
	Drake Road—40 feet**	5,056
	800 feet upstream	4,893
	confluence with Cache La Poudre River	
	300 feet downstream divergence from Spring Creek	4,906
Cache La Poudre River.	Prospect Road—20 feet**	4,894
	College Avenue—100 feet**	4,967
Dry Creek.....	College Avenue—100 feet**	4,974
	Willcox Lane—100 feet**	4,984

*Downstream of centerline.

**Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3651 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4459]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Glenwood Springs, Garfield County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Glenwood Springs, Garfield County, Colorado. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the na-

tional flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Glenwood Springs, Colorado.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Glenwood Springs, are available for review at City Hall, Office of the City Planner, 806 Cooper, Glenwood Springs, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Glenwood Springs, Colorado.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Colorado River.....	Bridge for Access Road to Railroad Yards—100 feet*	5,721
	Grand Avenue Bridge—80 feet*	5,734
	Pipes—80 feet*	5,741
	Denver and Rio Grande Western Railroad Bridge—80 feet*	5,720
Roaring Fork River.	Seventh Street Bridge—40 feet*	5,720
	Twenty Seventh Street Bridge—80 feet**	5,770
	Twenty Seventh Street Bridge—80 feet*	5,777

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Upstream confluence with Three Mile Creek—80 feet.	5,792

*Upstream of centerline.
**Downstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3652 Filed 2-6-79; 8:45 am]

[4210-01—M]

[Docket No. FI-44601]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Greeley, Weld County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Greeley, Weld County, Colorado. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Greeley, Colorado.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Greeley, Weld County, Colorado, are available for review at City Hall, 919 Seventh Street, Greeley, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Greeley, Weld County, Colorado.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cache La Poudre River.	5th Street (upstream side).	4,641
	Union Pacific Railroad—11th Avenue (upstream side).	4,645 4,648

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3653 Filed 2-6-79; 8:45 am]

[4210-01—M]

[Docket No. FI-44061]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Douglas, Coffee County, Ga.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Douglas, Coffee County, Georgia. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Douglas, Georgia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Douglas, Coffee County, Georgia, are available for review at City Hall, Douglas, Georgia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Douglas, Coffee County, Georgia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in

flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Seventeen Mile River	Georgia Highway 135-U.S. 221—50 feet*	187
Twenty Mile Creek	Georgia Highway 31-U.S. 441—50 feet*	194
	Central of Georgia Railroad—200 feet	196
	Rocky Pond Road—50 feet*	207
	Georgia Highway 353—50 feet*	211
	W. Ward Street—30 feet*	215
Tributary TM1	Georgia Highway 353—50 feet*	229
	1st dam upstream of confluence with Twenty Mile Creek—50 feet*	235
Stream A	Waldrop Avenue—30 feet*	211
	Georgia Highway 158—50 feet*	218
	McDonald Road—30 feet*	227
	Georgia Highway 135—50 feet*	246
	College Park Drive—30 feet*	250
Tributary A1	Earth Dam—100 feet**	223
	Earth Dam—20 feet*	233
Stream B	Lupo Lane—30 feet*	224
	Earth Dam—100 feet**	225
	Earth Dam—20 feet*	234
	Bell Lake Road—250 feet**	240
	Bell Lake Road—80 feet*	246
	Coffee Street—30 feet*	248
	South Pearl Avenue—50 feet*	249
Tributary B1	Georgia Highway 158—50 feet*	230
Tributary B2	East Mitchell Street—30 feet*	249
Stream C	East Baker Street—30 feet*	246
	Cherry Street—30 feet*	249
	Pearl Avenue—30 feet*	250
Stream D	Pine Street—30 feet*	238
	East College Park Drive—30 feet*	244
	Martin Luther King Jr. Drive—30 feet*	245
Stream F	Chester Avenue—25 feet*	195
	North Street—20 feet*	200
	North Peachtree Street—30 feet*	223
	West Irwin Street—30 feet*	229
	Seaboard Coastline Railroad—50 feet**	244
	Seaboard Coastline Railroad—50 feet*	250
Tributary F1	U.S. Highway 441—50 feet*	199
	Madison Avenue—50 feet*	202
Tributary F2	U.S. Highway 441—50 feet*	216
Stream G	Jefferson Street—30 feet*	214
	Central of Georgia Railroad—50 feet*	217
	North Daughtry Avenue—30 feet*	219
Stream H	South College Street—100 feet**	230
	South College Street—30 feet*	236

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	South Letitia Avenue—50 feet*	245
	West Bryan Street—30 feet*	252
Stream J	North Madison Avenue—30 feet*	219
Tributary J1	Franklin Street—50 feet**	220
	Franklin Street—30 feet*	224
Stream K	Farm Road—30 feet*	187
	East Walker Street—30 feet*	196
	Jackson Street—30 feet*	213
	Georgia Highway 32—Ward Street—50 feet*	221
	Ethel Street—30 feet*	223
Stream L	1st on Campus Road above confluence with Stream A—30 feet*	248
	Wheeler Street—100 feet*	255

*Upstream.
**Downstream.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3654 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4302]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for Benewah County, Idaho

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Benewah County, Idaho. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for Benewah County, Idaho.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Benewah County, Idaho, are available for review at Benewah County Courthouse, St. Maries, Idaho.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator; Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Benewah County, Idaho.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(n)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
St. Joe River	Confluence with Hells Gulch.	2,130
	Confluence with Cherry Creek.	2,137
	U.S. Alternate Route 95/State Highway 3*.	2,139
St. Marie's River (At St. Marie's).	U.S. Alternate Route 95/State Highway 3*.	2,140
St. Marie's River (At Santa).	State Highway 3—150 feet**.	2,633
Hells Gulch	U.S. Alternate Route 95*.	2,130
	Unnamed Bridge approximately 7,260 feet above U.S. Alternate Route 95*/Hells Gulch Road—15 feet**.	2,152
		2,105

*At centerline.

**Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3655 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4545]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Flood Elevation Determination for the City of Crest Hill, Will County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Crest Hill, Will County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Crest Hill, Will County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Crest Hill, are available for review at the City Hall, Crest Hill, Illinois.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Crest Hill, Will County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Des Plaines River..	South Corporate Limit...	545
	North Corporate Limit...	548
	Des Plaines River	547
	Mouth.	
	1,200 feet above Mouth..	566
	350 feet Upstream of State Route 53.	575
	Just Upstream of Elgin, Joliet and Eastern Railway.	581
	950 feet Upstream of Elgin, Joliet and Eastern Railway.	582
	5,000 feet Upstream of Elgin, Joliet and Eastern Railway.	590
	South Corporate Limit...	583
Rock Run	520 feet Downstream of U.S. Route 30.	584
	330 feet Downstream of U.S. Route 30.	586
	300 feet Downstream of U.S. Route 30.	590
	Just Downstream of Weber Road.	590
	1,130 feet Upstream of Weber Road.	591
	2,770 feet Upstream of Weber Road.	596
	Just Downstream of Pedestrian Bridge near Willowbridge Road.	617
	100 feet Downstream of Willowbridge Road.	625
	South Corporate Limit...	626
	Confluence with Rock Run.	591
Tributary A Rock Run.	800 feet Upstream of Confluence with Rock Run.	591
	1,600 feet Upstream of Confluence with Rock Run.	599
	Just Upstream of Weber Road.	615
	South Corporate Limit...	615

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's dele-

gation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3656 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4547]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of Willow Springs, Cook County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Willow Springs, Cook County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Willow Springs, Cook County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Willow Springs, Cook County, Illinois, are available for review at the Willow Springs Village Hall, 8480 Archer Avenue, Willow Springs, Illinois.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Willow Springs, Cook County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Des Plaines River..	Downstream Corporate Limits at Will County and Village of Willow Springs.	596
	Willow Springs Road.....	597
	Tri-State Tollway	597
	U.S. Routes 12, 20, 45	598
	Upstream Corporate Limits at Willow Springs and Hodgkins.	598
Flag Creek.....	Downstream Corporate Limit at Cook County & Willow Springs.	610
	German Church Road....	618
	Corporate Limit 650 feet upstream of German Church Road.	619
	Corporate Limit 1,050 feet upstream of German Church Road.	620
	Corporate Limit 1,200 feet upstream of German Church Road.	621
Tributary to Illinois and Michigan Canal.	Confluence with Illinois and Michigan Canal.	584
	Illinois Central Gulf Railroad.	587
	Archer Avenue.....	615
	Upstream Corporate Limits of Willow Springs & Cook County.	620

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3657 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4321]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Burlington, Coffey County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Burlington, Coffey County, Kansas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Burlington, Coffey County, Kansas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Burlington, Coffey County, Kansas, are available for review at the City Hall, 3rd and Hudson Streets, Burlington, Kansas.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Burlington, Coffey County, Kansas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination

to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Neosho River	Confluence with Rock Creek.	1,018
	Neosho Street Bridge	1,019
	City Dam.....	1,021
Rock Creek	Confluence with Neosho River.	1,018
	Third Street	1,021
	Culvert Outlet (downstream of Neosho Street).	1,021
	Fourth Street.....	1,022
	Culvert Inlet (Upstream of Fourth Street).	1,025
	Sixth Street.....	1,025
	Kennebec Street (1st Crossing).	1,020
	Sixteenth Street (Downstream).	1,032

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 STAT. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3658 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4550]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determinations for the City of Parsons, Labette County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Parsons, Labette County, Kansas. These base (100-year) flood elevations are the

basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect, in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Parsons, Labette County, Kansas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Parsons are available for review at the City Engineer's Office, Municipal Building, Parsons, Kansas.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Parsons, Labette County, Kansas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Labette Creek.....	0.5 mile Downstream of Southern Avenue.	867
	Just Downstream of St. Louis-San Francisco Railway.	869

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Just Downstream of Marvel Park Road.	872
	Just Upstream of Main Street.	873
	Just Upstream of 10th Street.	876
	Just Upstream of 16th Street.	880
	Just Upstream of 21st Street.	887
Railroad Drain.....	Just Upstream of Confluence with Labette Creek.	880
	Just Upstream of Lincoln Street.	881
	Just Upstream of 21st Street.	882
	Just Upstream of 22nd Street.	885
	500 feet Upstream of 22nd Street.	889
Oakwood Creek.....	Just Upstream of Confluence with Labette Creek.	871
	Just Upstream of Leawood Road.	874
	Just Upstream of Main Street.	892
	Just Upstream of County Road.	893
Little Labette Creek.	Just Upstream of Missouri-Kansas- Texas Railroad.	868
	Just Upstream of 16th Street.	872
	Just Downstream of Missouri-Kansas- Texas Railroad.	874
	Just Upstream of 21st Street.	878
	Just Upstream of 32nd Street.	879
	Just Downstream of Southwest Corporate Limits.	881
37th Street Drain..	West Corporate Limit.	886
	Just Upstream of Main Street.	889
Glenwood Creek....	Just Upstream of Confluence with Little Labette Creek.	874
	Just Upstream of Southern Avenue.	877
	Just Upstream of 24th Street.	878

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3659 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4612]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Guilford, Piscataquis County, Maine

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Guilford, Piscataquis County, Maine. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Guilford, Piscataquis County, Maine.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Guilford are available for review at the Town Office, Guilford, Maine.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Guilford, Piscataquis County, Maine.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Piscataquis River..	Eastern corporate limit..	365
	Just downstream of	378
	Lows Bridge.	
	Just downstream of	385
	Sangerville Road.	
	200 feet downstream of	389
	Gulford Dam.	
	Just upstream of State	398
	Route 15.	
	Western corporate limit.	399
Schoolhouse Brook.	At the confluence with	368
	Piscataquis River.	
	Just upstream of North	390
	Gulford Road	
	(nearest Dover Road).	
	100 feet upstream of	391
	North Gulford Road	
	(second crossing from	
	Dover Road).	422
	50 feet downstream of	
	North Gulford Road	
	(third crossing from	
	Dover Road).	
	50 feet upstream of	441
	North Gulford Road	
	(fourth crossing from	
	Dover Road).	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3660 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-45531]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Luke, Allegany County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Luke, Allegany County, Maryland. These

base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Luke, Allegany County, Maryland.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Luke, Allegany County, Maryland, are available for review at the Council Chambers, Luke City Hall, Luke, Maryland.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Luke, Allegany County, Maryland.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North Branch Potomac River:	Downstream Corporate	930
	Limits.	
	(Old) Cromwell Street....	931
	West Vaco Conveyor.....	946
	West Maryland	952
	Railroad Siding.	
	West Vaco Dam	953
	Upstream Corporate	969
	Limits.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3661 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4499]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Oakland, Garrett County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Oakland, Garrett County, Md. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Oakland, Garrett County, Md.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Oakland, Garrett County, Maryland, are available for review at the Garrett County Planning Commission, 323 Oak Street, Oakland, Maryland.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Oakland, Garrett County, Md.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Youghiogheny River.	Confluence of an unnamed tributary 770 feet upstream from Third Street Bridge.	2,382
	Third Street Bridge Upstream.	2,381
	Oak Street Bridge, 240 feet Upstream.	2,379
	Confluence of Wilson Run.	2,376
	Oakland Rosedale Road Bridge Upstream.	2,373
	Corporate Limits 80 feet Downstream from Oakland Rosedale Bridge.	2,372
	Bradley Run	2,382
Fairway Drive	Oakland Rosedale Road.	2,382
	Corporate Limits 55 feet Downstream from Chessie System.	2,371

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3662 Filed 2-6-79; 8:45 am]

[4210-01-M].

[Docket No. FI-4500]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Westernport, Allegany County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Westernport, Allegany County, Md. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Westernport, Allegany County, Md.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Westernport, Allegany County, Maryland, are available for review at the Westernport City Hall, Box 266, Westernport, Maryland.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Westernport, Allegany County, Maryland.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received

from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
George's Creek	Confluence with North Branch Potomac River.	916
	Upstream side of State Route 38.	917
	Upstream side of Chessie System, State Route 135.	919
	Upstream side of Washington Street State Route 325.	924
	Upstream side of Chessie System.	931
	700 feet upstream of Chessie System.	935
	Upstream side of Waverly Street.	946
	830 feet upstream of Waverly Street.	958
	1,650 feet upstream of Waverly Street.	968
	2,450 feet upstream of Waverly Street.	979
	2,750 feet upstream of Waverly Street.	983
	North Branch Potomac River.	900
	Downstream Corporate Limits.	910
350 feet downstream of State Route 38.	State Route 38 (Upstream Side).	917
	Upstream Corporate Limits.	920

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3663 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4462]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determinations for the Town of Medfield, Norfolk County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Medfield, Norfolk County, Massachusetts.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Medfield, Massachusetts.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Medfield, Norfolk County, Massachusetts, are available for review at the Town Hall, Medfield, Massachusetts.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Medfield, Norfolk County, Massachusetts.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Charles River.....	1st crossing Conrail—50 feet*	123
	Main Street—50 feet*	124
	Orchard Street—100 feet* ..	125
Vine Brook	Private Road—20 feet8...	132
	Main Street (State Route 109)—40 feet* ..	135
	Cemetery Road—20 feet* ..	145
	State Route 27-60 feet* ..	152
	Conrail—60 feet*	167
	North Street—80 feet* ..	173
	Private Drive—20 feet* ...	176

* Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3664 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4522]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Pontiac, Oakland County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Pontiac, Oakland County, Michigan. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Township of Pontiac, Oakland County, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Pontiac are available for review at the Pontiac Township Hall, 1827 North Squirrel Road, Pontiac, Michigan.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Township of Pontiac, Oakland County, Michigan.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clinton River	At Eastern Corporate Limits.	832
	At Upstream side of Hamlin Road.	840
	At Upstream side of Route 59.	843
	1,300 feet Downstream of Squirrel Road.	844
	Upstream side of Squirrel Road.	848
	1,800 feet Downstream of Interstate 75.	862
	At Interstate 75	884
	Just Downstream of Van Horn Bridge.	885
	Just Upstream of Auburn Road.	887

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Galloway Creek.....	At Opdyke Road.....	859
	200 feet Upstream of Eastern Corporate Limit.	835
	Upstream of a Private Road, 700 feet.	841
	Downstream of Squirrel Road.	
	Upstream of Squirrel Road.	846
	Just Upstream of Private Bridge approximately 1.2 miles Downstream of Interstate 75.	869
	100 feet Upstream of Interstate 75.	898
	At Opdyke Road.....	906
	Upstream of University Drive.	910
	Just Upstream of Collier Road.	938
Galloway Ditch.....	Upstream of Joslyn Road.	940
	Upstream at Grand Trunk Western Railroad.	947
	Upstream at Collier Road.	950
	Downstream of Baldwin Road.	950
	At Corporate Limit with Pontiac City.	933
	At Golf Course Drive.....	934
	At Interstate 75.....	935

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3665 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4525]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Houston, Houston County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Houston, Houston County, Minnesota. These base (100-year) flood elevations

are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Houston, Houston County, Minnesota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Houston are available for review at the City Hall, 314 South Jefferson Street, Houston, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Houston, Houston County, Minnesota.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Root River.....	East Corporate Limit.....	633
	Downstream of State Highway 76.	635
	500 feet Upstream of State Highway 76.	638
	West Corporate Limit.....	690

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7 (o) (4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3666 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4526]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for The Unincorporated Areas of Mower County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the unincorporated areas of Mower County, Minnesota.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the unincorporated areas of Mower County, Minnesota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the unincorporated areas of Mower County, Minnesota, are available for review at the Mower County Courthouse, Austin, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the unincorporated areas of Mower County, Minnesota.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Main Stem Little Cedar River.	Just upstream of County-State Aid Highway 7.	1,259
	Approximately 200 feet downstream of Township Road 67.	1,270
	Just upstream of Minnesota Highway 56.	1,284
West Branch of Little Cedar River.	Approximately 100 feet downstream of Chicago, Milwaukee, Saint Paul, and Pacific Railroad Bridge.	1,268
Middle Branch of Little Cedar River.	Approximately 100 feet upstream of Township Road 29.	1,282
	Approximately 150 feet downstream of County-State Aid Highway 4.	1,292
East Fork of Middle Branch of Little Cedar River.	Approximately 200 feet downstream of County-State Aid Highway 7.	1,292
Cedar River.....	Just upstream of Township Road 159.	1,151
	Just upstream of County-State Aid Highway 4.	1,175
	Just downstream of County-State Aid Highway 28.	1,185
	Approximately 200 feet downstream of County-State Aid Highway 25 (downstream crossing).	1,206
	Approximately 200 feet downstream of County-State Aid Highway 1.	1,236
Upper Iowa River.	Just upstream of Minnesota Highway 56.	1,261
	Just upstream of Township Road 237.	1,279

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Rose Creek.....	Just downstream of County-State Aid Highway 29.	1,179
	Just downstream of Township Road 54.	1,198
	Just downstream of Township Road 18.	1,245
Wolf Creek.....	Just downstream of the Chicago, and Milwaukee, Saint Paul, and Pacific Railroad Bridge.	1,204
	Just downstream of northernmost crossing of County-State Aid Highway 16.	1,222
East Tributary to Wolf Creek.	Just downstream of County Road 61.	1,223
Roberts Creek	Approximately 100 feet upstream of County-State Aid Highway 16 Bridge.	1,241
	Just downstream of Minnesota Highway 56 Bridge.	1,262
South Branch Roberts Creek.	Just upstream of Township Road 136.	1,274
Middle Branch Roberts Creek.	Just downstream of the westernmost crossing at Township Road 136 Bridge.	1,302
Deer Creek.....	Approximately 100 feet upstream of U.S. Highway 16 Bridge.	1,317
	Approximately 150 feet downstream of County-State Aid Highway 8 Bridge.	1,333
North Fork of Dobbins Creek.	Approximately 150 feet downstream of County-State Aid Highway 24.	1,219
	Just downstream of Township Road 296 Bridge.	1,228
South Fork of Dobbins Creek.	Just downstream of County-State Highway 24.	1,219
	Approximately 100 feet downstream of Township Road 296.	1,231
Waltham Creek.....	Just downstream of Township Road 138 Bridge.	1,303
	Just downstream of Chicago Northwestern Railroad Bridge.	1,308
	Just downstream of Township Road 134 Bridge.	1,350
Turtle Creek.....	Just downstream of 4th Drive.	1,189
	Just upstream of Oakland Avenue (US Highway 16).	1,192
	Approximately 400 feet upstream of Interstate 90.	1,193

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of Housing and Urban Development Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3667 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-45271]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Rockville, Stearns County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Rockville, Stearns County, Minnesota. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Rockville, Stearns County, Minnesota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Rockville are available for review at the Rockville City Hall, Rockville, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Rockville, Stearns County, Minnesota.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination

to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sauk River	Downstream corporate limits.	1,070
	Just downstream of Mill Street Bridge.	1,071
	Upstream corporate limits.	1,072

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3668 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4528]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Rose Creek, Mower County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Rose Creek, Mower County, Minnesota. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Rose Creek, Mower County, Minnesota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Rose Creek are available for review at the Rose Creek City Hall, Rose Creek, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Rose Creek, Mower County, Minnesota.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Rose Creek	At Western Corporate Limit.	1,239
	Just Upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	1,240
	Upstream side of State Highway 56.	1,243
	At Northern Corporate Limits.	1,243

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3669 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4585]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Bella Villa, St. Louis County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Bella Villa, St. Louis County, Missouri. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Bella Villa, St. Louis County, Missouri.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Bella Villa are available for review at the City Hall, Bella Villa, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Bella Villa, St. Louis County, Missouri.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added sec-

tion 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gravols Creek.....	Northeast corporate limits.	431
	Northwest corporate limits.	431

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3670 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4588]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of St. Ann, St. Louis County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of St. Ann, St. Louis County, Missouri. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is re-

quired to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of St. Ann, St. Louis County, Missouri.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of St. Ann are available for review at the City Hall, 10405 St. Charles Rock Road, St. Ann, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of St. Ann, St. Louis County, Missouri.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Coldwater Creek ...	Northwest corporate limits.	540
	Just downstream from footbridge No. 3.	543
	750 feet downstream from Wright Road.	546
	100 feet upstream from Wright Road.	550
Dawson Creek.....	Eastern corporate limits	555
	Confluence with Coldwater Creek.	548
	250 feet downstream from St. Charles Rock Road.	550

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Just downstream from St. Charles Rock Road.	552
	Just upstream from St. Charles Rock Road.	557

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3671 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3961]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Independent City of St. Louis, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Independent City of St. Louis, Missouri. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Independent City of St. Louis, Missouri.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Independent City of St. Louis, Missouri are available for review at City Hall, Office of the Board of Public Services, 1200 Market Street, St. Louis, Missouri 63103.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Independent City of St. Louis, Missouri.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mississippi River...	Just upstream of Interstate 270 Bridge.	434
	Just upstream of McKinley Bridge.	430
	Just upstream of Poplar Street Bridge (Interstate 70).	427
	Sublette Avenue	453
River Des Peres.....	Just downstream of Southwest Avenue.	440
	Confluence of Deer Creek.	432
	Just upstream of Lansdowne Avenue.	430
	Approximately 200 feet downstream of Loughborough Avenue.	422
Rock Creek	Just upstream of River Des Peres Boulevard.	424
No name Creek.....		

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of Housing and Urban Development Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3672 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4587]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Sarcoxie, Jasper County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Sarcoxie, Jasper County, Missouri. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Sarcoxie, Jasper County, Missouri.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Sarcoxie are available for review at the City Hall, Sarcoxie, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for City of Sarcoxie, Jasper County, Missouri.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a

period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Swift Creek.....	1,040 feet downstream of Business Loop 44.	1,083
	450 feet downstream of Business Loop 44.	1,083
	150 feet upstream of Business Loop 44.	1,084
	Just downstream of Center Street.	1,091
	Just downstream of Joplin Avenue.	1,160
	1,150 feet upstream of Joplin Avenue.	1,107
	1,700 feet upstream of Joplin Avenue at southern corporate limit.	1,108
Center Creek	1,025 feet downstream of Business Loop 44.	1,083
	930 feet upstream of Business Loop 44.	1,086

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3673 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4467]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Whitefish, Flathead County, Mont.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Whitefish, Flathead County, Montana.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Whitefish, Montana.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Whitefish, are available for review at City Hall, Third and Flathead, Whitefish, Montana.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Whitefish, Montana.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Whitefish Lake.....	Areas adjacent to shore	3,000
Whitefish River	Spokane Avenue—100 feet*	2,998
	Baker Avenue—50 feet*	2,999
	Second Street—50 feet*	3,000
	Burlington Northern Railroad—50 feet*	3,000

* Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3674 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4452]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Boscawen, Merrimack County, N.H.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Boscawen, Merrimack County, New Hampshire. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Boscawen, Merrimack County, New Hampshire.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Boscawen, Merrimack County, New Hampshire, are available for review at the Town Office, Boscawen, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-

755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Boscawen, Merrimack County, New Hampshire.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	Concord Boscawen corporate limits.	254
	Just upstream	260
	Canterbury Boscawen (abandoned) Bridge.	
	Confluence with Glines Brook.	265
Contoocook River.	Just upstream of East Street Bridge.	270
	Sweatt Street extended..	295
Gilnes Brook.....	Approximately 400 feet upstream of Boston and Malne R.R. Bridge.	280
Tannery Brook.....	Just upstream of Route 3 Bridge.	269
	Confluence of Cold Brook.	297
	Approximately 100 feet downstream of Goodhue Road Culvert.	369

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
IFR Doc. 79-3675 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-45091]

**PART 1917—APPEALS FROM FLOOD
PROPOSED ELEVATION DETERMI-
NATIONS**

**Final Flood Elevation Determination
for the Township of Hainesport,
Burlington County, N.J.**

AGENCY: Federal Insurance Adminis-
tration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Hainesport, Burlington County, New Jersey. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Township of Hainesport, New Jersey.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Hainesport, Burlington County, New Jersey, are available for review at Hainesport Municipal Building, 100 Broad Street, Hainesport, New Jersey.

**FOR FURTHER INFORMATION
CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Township of Hainesport, Burlington County, New Jersey.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North Branch Rancocas Creek	Most Downstream	11
	Corporate Limits	
	Most Upstream	11
South Branch Rancocas Creek	Corporate Limits	
	Most Downstream	11
	Corporate Limits	
Masons Creek	State Highway 38	11
	Marne Highway	11
	Masonville-Foresttown Road	12
	Mt. Laurel-Hainesport Road	17
	Phillips Road	24
	Fenimore Road (Corporate Limit)	30

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
IFR Doc. 79-3676 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-9031]

**PART 1917—APPEALS FROM PRO-
POSED FLOOD ELEVATION DETER-
MINATIONS**

**Final Flood Elevation Determination
for the Borough of Madison, Morris
County, N.J.**

AGENCY: Federal Insurance Adminis-
tration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for se-

lected locations in the Borough of Madison, Morris County, New Jersey. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Borough of Madison, Morris County, New Jersey.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Madison, Morris County, New Jersey, are available for review at the Borough Clerk's Office, Hartley Dodge Memorial, Kings Road, Madison, New Jersey.

**FOR FURTHER INFORMATION
CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Madison, Morris County, New Jersey.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Spring Garden Brook	Downstream Corporate Limits	185
	Pipe Bridge (Upstream)	189
	Trail Place (Upstream)	192
	Dean Street (Upstream)	196
	Main Street (Upstream)	201
	Cross Street (Upstream)	202

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Black Brook	Downstream Corporate Limits.	200
	Chateau Thlerry Avenue.	200
	Argonne Avenue	203
	Belleau Avenue	209
Unnamed, Tributary to	Downstream Corporate Limits.	193
Spring Garden Brook.	Delbarton Drive (Projection).	194
	Culvert Exit, Limit of Detailed Study.	201

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3677 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4320]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Borough of Seaside Heights, Ocean County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Seaside Heights, Ocean County, New Jersey. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Borough of Seaside Heights, Ocean County, New Jersey.

ADDRESS: Maps and other information showing the detailed outlines of

the flood-prone areas and the final elevations for the Borough of Seaside Heights, Ocean County, New Jersey, are available for review at the Seaside Borough Hall, Central Avenue, Seaside, New Jersey.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Seaside of Heights, Ocean County, New Jersey.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Atlantic Ocean	Eastern Shoreline	8
Barneget Bay	Western Shoreline	6

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3678 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4281]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Babylon, Suffolk County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Babylon, Suffolk County, New York.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Babylon, Suffolk County, New York.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Babylon, Suffolk County, New York, are available for review at the Babylon Town Hall, 200 East Sunrise Highway, North Lindenhurst, New York.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Babylon, Suffolk County, New York.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has

resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Great South Bay...	Along Great Neck Creek upstream to Audley Court.	6
	Buchanan Avenue.....	6
	Lake Street.....	6
	Howell Creek.....	6
	Riviera Drive East and West.	6
	Along Strongs Creek.....	6
	Along Neguntatogue Creek.	6
	Along Santapogue Creek upstream to Montauk Highway.	6
	Along W. Babylon Creek	6
	Along Woods Creek.....	6
	North side of Barrier Island.	6
	All islands between Barrier Island and Main Island.	6
Atlantic Ocean	South side of Barrier Island.	11
	South and West Side Fire Island.	11
Fire Island Inlet....	South Side Barrier Island.	11
	North Side Fire Island ...	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3679 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4514]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Zap, Mercer County, N. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for se-

lected locations in the City of Zap, Mercer County, North Dakota. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Zap, North Dakota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Zap, are available for review at City Hall, Zap, North Dakota.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Zap, North Dakota.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Spring Creek.....	Downstream	1,826
	Extraterritorial Limits.	
	Burlington Northern Railroad.	1,830
	County Highway 862 (upstream side).	1,839
	3rd Avenue Bridge.....	1,842
	Upstream	1,849
	Extraterritorial Limits.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3680 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4535]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of Grand River, Lake County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Grand River, Lake County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Grand River, Lake County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Grand River are available for review at the Grand River Village Hall, Singer Road, Grand River, Ohio.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Grand River, Lake County, Ohio.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Grand River.....	Southern Corporate Limit.	576
	3,720 feet downstream from Fairport, Painesville and Eastern Railroad.	576
	3,120 feet downstream from Fairport, Painesville and Eastern Railroad.	576
	2,260 feet downstream from Fairport, Painesville and Eastern Railroad.	576
	840 feet downstream from Fairport, Painesville and Eastern Railroad.	576
	At Fairport, Painesville and Eastern Railroad.	576
	800 feet upstream from Fairport, Painesville and Eastern Railroad.	577

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3681 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4641]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of North Perry, Lake County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of North Perry, Lake County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of North Perry, Lake County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of North Perry are available for review at the Village Hall, North Perry, Ohio.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of North Perry, Lake County, Ohio.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or in-

dividuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Erie.....	Shoreline of community	581

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3682 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4426]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Gresham, Multnomah County, Ore.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Gresham, Multnomah County, Oregon. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map

(FIRM), showing base (100-year) flood elevations, for the City of Gresham, Oregon.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Gresham, are available for review at City Hall, 150 West Powell, Gresham, Oregon.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Gresham, Oregon.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Johnson Creek	Portland Traction Company Railroad-100 feet upstream	261
	Southeast 190th Avenue	264
	Confluence with Butler Creek	267
	Towle Avenue.....	281
	Walters Road.....	294
	Bull Run Road.....	296
	Main Avenue.....	298
	Park Footbridge.....	300
	Dowsett Lane.....	305
	Southeast Regner Road	312
	Liberty Avenue—50 feet upstream	322
	Hogan Road.....	334
Beaver Creek	Upstream Corporate Limits	352
	Downstream Corporate Limits	212
	Confluence with Kelly Creek—100 feet downstream	230

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Upstream Corporate Limits	241

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
(FR Doc. 79-3683 Filed 2-6-79; 8:45 am)

[4210-01-M]

(Docket No. FI-4570)

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Brady, Lycoming County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Brady, Lycoming County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Township of Brady, Lycoming County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Brady, Lycoming County, Pennsylvania are available for review at the Brady Community Center, R. D. 2, Montgomery County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Township of Brady, Lycoming County, Pennsylvania.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Branch Susquehanna River.	Downstream Corporate Limits	483
	Confluence of Black Run	488
	Upstream Corporate Limits	489

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
(FR Doc. 79-3684 Filed 2-6-79; 8:45 am)

[4210-01-M]

[Docket No. FI-2855]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination for the Borough of Driftwood, Cameron County, Pa.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Driftwood, Cameron County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Borough of Driftwood, Cameron County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Driftwood, Cameron County, Pennsylvania, are available for review at the Borough Building, Driftwood, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Driftwood, Cameron County, Pennsylvania.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been

provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Sinnemahoning Creek.	Downstream Corporate Limits.	809
	Confluence w/Bennetts Branch and Driftwood Branch.	810
	Confluence w/Bennetts Branch and Sinnemahoning Creek.	810
	100 feet upstream of Route 555 Bridge.	814
	At Clinton Street extended.	817
	750 feet downstream Conrail Bridge.	820
	180 feet downstream Conrail Bridge.	821
	35 feet upstream Conrail Bridge.	822
	290 feet upstream Conrail Bridge.	825
	1,225 feet upstream Conrail Bridge.	826
Bennetts Branch Sinnemahoning Creek.	1,990 feet upstream Conrail Bridge.	827
	Confluence w/ Driftwood Branch and Sinnemahoning Creek.	810
	30 feet downstream Castle Garden Road.	811
	30 feet upstream Castle Garden Road.	814
	50 feet downstream confluence w/Boyer Run.	815
	160 feet downstream Conrail Bridge.	815
	35 feet downstream Conrail Bridge.	818
	Upstream side of Conrail Bridge.	821
	25 feet downstream Route 555 Bridge.	835
	25 feet upstream Route 555 Bridge.	840
Boyer Run.	220 feet upstream Route 555 Bridge.	844
	725 feet upstream Route 555 Bridge.	867

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3685 Filed 2-6-79; 8:45 am].

[4210-01-M]

[Docket No. FI-45731]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination for the Borough of Millvale, Allegheny County, Pa.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Millvale, Allegheny County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Borough of Millvale, Allegheny County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Millvale, Allegheny County, Pennsylvania, are available for review at the Millvale Borough Building, 501 Lincoln Avenue, Millvale, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Millvale, Allegheny County, Pennsylvania.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been

provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Allegheny River	Upstream Corporate Limits.	739
	Downstream Corporate Limits.	738
Gritty's Run	Upstream Corporate Limits.	793
	Evergreen Avenue (Upstream).	790
	North Avenue (Upstream).	778
	Frederick Street (Downstream).	765
	Klopper Street (Upstream).	757
	Fremont Street (Upstream).	747
	Sherman Street (Upstream).	738
	Bennett Street (Downstream).	734

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3686 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4432]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Highland Park, Dallas County, Texas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of High-

land Park, Dallas County, Texas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base flood elevations, for the Town of Highland Park, Dallas County, Texas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Highland Park, Dallas County, Texas, are available for review at Highland Park Town Hall, Town Engineer's Office, 4700 Drexel Drive, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Highland Park, Dallas County, Texas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Turtle Creek	Just upstream of Armstrong Avenue and Dam.	484
	Just upstream of Beverly Drive.	502
	Just upstream of Dallas Country Club South Dam.	525

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stream 6A1	Just upstream of Lexington Avenue.	504
	Just upstream of Miramar Avenue.	515

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3687 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4452]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of LaJoya, Hidalgo County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of LaJoya, Hidalgo County, Texas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of LaJoya, Hidalgo County, Texas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of LaJoya, Hidalgo County, Texas, are available for review at the City Manager's Office, City Hall, P.O. Drawer H, LaJoya, Texas 78560.

FOR FURTHER INFORMATION CONTACT:

[4210-01-M]

[Docket No. FI-4433]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination for the City of Mart, McLennan County, Tex.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Mart, McLennan County, Texas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Mart, McLennan County, Texas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the the City of Mart, McLennan County, Texas, are available for review at the City Hall, 112 North Commerce Street, Mart, Texas 76664.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Mart, McLennan County, Texas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received

from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tributary 1.....	Southeastern corporate limits.	498
	Approximately 150 feet downstream of Carpenter Street.	508
Tributary 2.....	Approximately 100 feet downstream of Enterprise Row.	500
	Just downstream of Front Street.	513

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-3689 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4382]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination for the City of Mercedes, Hidalgo County, Tex.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Mercedes, Hidalgo County, Texas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of LaJoya, Hidalgo County, Texas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Rio Grande	11th Street between Garza and Leo Avenues.	131
	Military Road.....	131
Walker Lake	Walker Lake.....	134

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of Housing and Urban Development Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ
Federal Insurance Administrator.

[FR Doc. 79-3688 Filed 2-6-79; 8:45 am]

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Mercedes, Hidalgo County, Texas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Mercedes, Hidalgo County, Texas, are available for review at City Hall, P.O. Box 837, Mercedes, Texas 78570.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Mercedes, Hidalgo County, Texas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ponding in Southwest corner of city, adjacent to east levee of North Floodway.	At intersection of Marlyand Avenue and Fourteenth Street.	62
Ponding along Arroyo Anacuitas.	At intersection of Fifth Street and Chapman Street.	58
Ponding in Northwest part of city, adjacent to east levee of North Floodway.	At Mile 1 West Road and east levee.	65
Ponding in north part of city, north of fairgrounds and west of Main Canal.	Missouri Avenue 1000 feet north of fairgrounds.	63

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

IFR Doc. 79-3690 Filed 2-6-79; 8:45 am

[4210-01-M]

[Docket No. FI-4434]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Pharr, Hidalgo County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Pharr, Hidalgo County, Tex. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Pharr, Hidalgo County, Tex.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Pharr, Hidalgo County, Texas, are available for review at the Manager's Office, City Hall, P.O. Drawer B, Pharr, Texas 78577.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance,

Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Pharr, Hidalgo County, Tex.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic, vertical datum
Ponding at The Natural Depression in Northwest Pharr.	At Intersection of Bell Avenue and Hibiscus Street.	110
Drain "Ex"	Intersection of Drain "Ex" and U.S. Highway 281.	90
	Intersection of South "I" Road and Lateral "E" Canal.	90

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of Housing and Urban Development Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

IFR Doc. 79-3691 Filed 2-6-79; 8:45 am

[4210-01-M]

[Docket No. FI-4413]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination for the City of Salem, Utah County, Utah**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Salem, Utah County, Utah. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Salem, Utah.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Salem, Utah County, Utah, are available for review at City Hall, 30 West 100 South Street, Salem, Utah.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Salem, Utah.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Salem Pond.....	Intersection of 400 West Street and 200 South Street.	4,584
	200 feet west of intersection of Main Street and 300 South Street.	4,584
Maple Canyon and Snell Hollow.	Intersection of 300 South Street and 200 East Street.	2*

*Depth.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3692 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4414]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS.**Final Flood Elevation Determination for the Village of Bellows Falls, Windham County, Vt.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Bellows Falls, Windham County, Vermont. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Bellows Falls, Vermont.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Bellows Falls, Windham County, Vermont, are available for review at Municipal Building, Bellows Falls, Vermont.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Bellows Falls, Vermont.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	Bridge Street—25 feet downstream from centerline.	250
	Boston and Main Railroad (Stone Arch Bridge)—225 feet upstream from centerline.	292
	New England Power Company Dam—100 feet upstream from centerline.	295

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3693 Filed 2-6-79; 8:45 am]

[4210-01-M]

IDocket No. FI-44161

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Rockingham, Windham County, Vt.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Rockingham, Windham County, Vermont. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Rockingham, Vermont.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Rockingham, Windham County, Vermont, are available for review at Municipal Building, Bellows Falls, Vermont.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Rockingham, Vermont.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added sec-

tion 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	Confluence with Williams River.	297
	Confluence with Commissary Brook.	300
Saxtons River.....	Barbers Park Road—centerline.	398
	Hall Bridge Road—centerline.	409
	Confluence with Leach Road Tributary.	524
	Confluence with Weaver Brook.	578
Weaver Brook.....	State Route 121—60 feet*.	589
Williams River.....	Mill Dam—50 feet*.	594
	U.S. Route 5—150 feet*.	303
	Brockways Mill Road—25 feet downstream of centerline.	443
	Brockways Mill Road—90 feet*.	452
	Williams Road—centerline.	469
	Lower Bartonsville Road—centerline.	478

*Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3694 Filed 2-6-79; 8:45 am]

[4210-01-M]

IDocket No. FI-44741

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Dungannon, Scott County, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Dungannon, Scott County, Virginia. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Dungannon, Scott County, Virginia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Dungannon, Scott County, Virginia, are available for review at the Dungannon Town Hall, Dungannon, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Dungannon, Scott County, Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clinch River.....	Downstream State Route 65.	1,305
	Upstream State Route 65.	1,308
	0.31 miles upstream Route 65.	1,312
	0.65 miles upstream Route 65.	1,318

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3695 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4138]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Roanoke, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Roanoke, Virginia. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Roanoke, Virginia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Roanoke, Virginia, are available for review at the Municipal Building, 215 Church Street, Roanoke, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Roanoke, Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Roanoke River.....	Upstream Tayloe Avenue.	908
	Upstream Main Street (U.S. 220).	945
	Upstream Corporate Limit.	984
Tinker Creek.....	Upstreamside Orange Avenue.	925
	Downstreamside Preston Avenue.	980
Glade Creek.....	Upstream Vinton Mill Road.	913
	Downstreamside Berkley Road.	927
Glade Creek Tributary.	Upstream State 653.....	937
	Downstreamside U.S. 460.	999
Lick Run.....	Upstream 8th Street.....	919
	Upstream Orange Avenue.	940
Trout Run.....	Upstream 5th Street.....	931
	Upstream 7th Street.....	941
Barnhardt.....	Downstream side U.S. 11	997
	Upstream U.S. 11.....	1,002
	Upstream side Glenmoor Drive.	1,018
Mudlick Creek.....	Downstream Mudlick Road.	981

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Upstream side Grandin Road.	1,003
Carvin Creek.....	Upstream Hollins Road (State 601).	983
	Downstream Hersherberger Road.	985
Carnard Branch....	Upstream Riverland Road.	910
	Upstream Findlay Road.	958
Gum Spring Branch.	Upstream Garden City Drive.	980
	Upstream Tipton Avenue.	1,008
Murray Run.....	Upstream Brandon Avenue.	940
	Upstream West Drive....	980
	Upstream Ogden Road....	1,008
Ore Branch.....	Upstream Willey Drive....	937
	Upstream Broadway Avenue.	961
Ore Branch Tributary.	Upstreamside State 419..	1,097
	Upstreamside Franklin Road (U.S. 220).	1,107
Peters Creek.....	Upstream Norfolk & Western Railroad.	907
	Upstream Peachtree Drive.	1,024

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3696 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4554]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Benton City, Benton County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Benton City, Benton County, Washington. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show

evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Benton City, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Benton City, are available for review at Town Hall, Division Street, Benton City, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Benton City, Washington.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Yakima River	Union Pacific Railroad Bridge—100 feet*	469
	8th Street—100 feet*	474

*Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3697 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4476]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Blaine, Whatcom County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Blaine, Whatcom County, Washington. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Blaine, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Blaine, are available for review at City Hall, Blaine, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Blaine, Washington.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance

Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Semlahmoo Bay	At northwest shore Semlahmoo Spit.	8
Drayton Harbor	Along shoreline	8
Dakota Creek	At Pearce Portal Drive	8

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3698 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4401]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Nederland, Boulder County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Nederland, Boulder County, Colorado. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show

evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE-DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Nederland, Colorado.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Nederland, are available for review at Town Hall, Clerk's Office, Nederland, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Nederland, Colorado.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Middle Boulder Creek.	Confluence with Barker Reservoir.	8,185
	State Highway 119—30 feet*.	8,226
	At Upstream Corporate Limits.	8,319
North Beaver Creek.	First Street—20 feet*	8,201
	State Highway 119—centerline.	8,230
	Third Street—20 feet*	8,262
	State Highway 72—40 feet*.	8,278

* Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3699 Filed 2-6-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3871]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS JUDICIAL REVIEW

Final Flood Elevation Determination for The City of Westport, Grays Harbor County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Westport, Grays Harbor County, Washington. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Westport, Grays Harbor County, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Westport, Grays Harbor County, Washington, are available for review at the Office of the City Clerk, City Hall, Westport, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Westport, Grays Harbor County, Washington.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pacific Ocean.....	Intersection of Newell Avenue and Surf Street.	20
	Harbor Street at Westhaven State Park entrance.	20
	Intersection of Coast Street and 2nd Avenue.	10
	Intersection of First Street and Patterson Street.	10
Grays Harbor	Intersection of Tacoma Avenue and Fourth Street.	13
	East end of Park Avenue.	13
	Intersection of Montecano Street and Sprague Avenue.	11
Tidal slough Backwater from Pacific Ocean.	Intersection of Ocean Avenue and Broadway Street.	11
	Approximately 400 feet east of the intersection of Highway 105 and Newell Avenue.	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of Housing and Urban Development Act, section 324 of the Housing and Community amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-3700 Filed 2-6-79; 8:45 am]

[7715-01-M]

Title 39—Postal Service

CHAPTER III—POSTAL RATE
COMMISSION

[Order No. 237—Docket No. RM79-1]

PART 3002—ORGANIZATION

Commission Voting Procedure; Order
Amending Organizational Rules

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This rule amends that provision of the Postal Rate Commission's organizational rules prescribing voting requirements for final acts of the Commission to bring those requirements into conformity with amendments to the Postal Reorganization Act brought about by Pub. L. 94-421.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION
CONTACT:

David F. Stover, Assistant General Counsel (Regulation), U.S. Postal Rate Commission, 2000 L Street, NW., Suite 500, Washington, D.C. 20268, (202) 254-3830.

SUPPLEMENTARY INFORMATION:

JANUARY 31, 1979.

The Postal Rate Commission's report on its plan to voluntarily implement Executive Order No. 12044, an order designed to improve federal agency regulations, was published in the *FEDERAL REGISTER* on January 12, 1979 (44 FR 2806). Pursuant to that plan, the Commission issued an Advance Notice of Proposed Rulemaking, also published in the *FEDERAL REGISTER* on January 12, 1979 (44 FR 2607). The Advance Notice of Proposed Rulemaking proposed certain amendments to the Commission's rules and invited the public to submit comments on those proposed amendments on or before January 22, 1979.

The Advance Notice was devoted primarily to proposed amendments to the Commission's rules of practice, as our plan implementing Executive Order No. 12044 intends. The Advance Notice, however, included certain proposed technical amendments to the Commission's rules. Among them was a proposed amendment to 39 CFR 3002.2(a), a rule affecting Commission organization. Section 3002.2(a) currently reads, in pertinent part:

Three members of the Commission constitute a quorum for the transaction of business, but all final acts of the Commission shall be by a vote of an absolute majority of the Commissioners.

The language following "business" in the above-quoted sentence reflects language found in former 39 U.S.C. 3604(a) that has since been deleted from the statute by Public Law 94-421, enacted September 24, 1976 (80 Stat. 1305). The Advance Notice proposed to delete that language from 39 CFR 3002.2(a) to bring that rule into conformity with the current statute. Since current 39 U.S.C. 3604 is silent regarding the requisite vote for final acts of the Commission, the effect of this amendment to §3002.2(a), proposed in the Advance Notice, will be to subject this aspect of the Commission's operations to the common law rule stated in *FTC v. Flotill Products*, 389 U.S. 179, 183-84 (1967) that:

... in the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body. Where the enabling statute is silent on the question, the body is justified in adhering to that commonlaw rule.

Because the amendment to 39 CFR 3002.2(a) proposed by our Advance Notice would merely delete a provision of that subsection already made invalid by Public Law 94-421, it would effect a technical rather than substantive change in our rules. In addition, the rule affected is merely organizational, rather than a rule of practice. For these reasons it is non-controversial, as indicated by the absence of public comment in response to our Advance Notice. It would serve no apparent purpose to subject such an amendment to the successive rounds of comment and review which the remainder of the proposals in the Advance Notice are scheduled to undergo. Accordingly, we will sever this proposed amendment to 39 CFR 3002.2(a) from the rulemaking process instituted by our Advance Notice published January 12, 1979, and adopt it as proposed.

Since the amendment herein involves matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply. Accordingly, pursuant to 39 U.S.C. 3603, it is ordered that, effective February 1, 1979, 39 CFR 3002.2(a) is hereby revised to read as follows:

§ 3002.2 The Commission and its offices.

(a) *The Commission.* The Postal Rate Commission is an independent establishment of the executive branch of the U.S. Government created by the Postal Reorganization Act (84 Stat. 719, Title 39, United States Code). The Commission consists of five Commissioners appointed by the President,

one of whom is designated as Chairman by the President. Three members of the Commission constitute a quorum for the transaction of business.

By the Commission.

DAVID F. HARRIS,
Secretary.

[FR Doc. 79-4233 Filed 2-6-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[OPP-250011A; FRL 1017-2]

PART 162—REGULATIONS FOR THE
ENFORCEMENT OF THE FEDERAL
INSECTICIDE, FUNGICIDE AND RO-
DENTICIDE ACT

Subpart A—Registration, Reregistra-
tion and Classification Procedures

AGENCY: Environmental Protection
Agency, Office of Pesticide Programs.

ACTION: Final rule.

SUMMARY: This rule requires the special packaging of certain toxic pesticides in child-resistant containers and sets forth the toxicity criteria to be used to determine which residential use pesticides are affected. The intent of this rule is to decrease the number of hazardous exposures of pesticide products to children.

DATES: Effective Date: March 9, 1979. This regulation applies to products released for shipment after March 9, 1981.

FOR FURTHER INFORMATION
CONTACT:

Maureen Johns Grimmer, Project Leader, (TS-768), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202-755-8036).

SUPPLEMENTARY INFORMATION: On October 14, 1977, EPA published a proposed rule (42 FR 55235) to require certain pesticides to be specially packaged in child-resistant containers. This rule is designated § 162.16 of Title 40 and is authorized under Section 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (Pub. L. 92-516, 86 Stat. 983; Pub. L. 94-140, 89 Stat. 755; Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136 et seq.; hereinafter referred to as "FIFRA").

BACKGROUND

Final rules for the registration, reregistration, and classification of pesticides (40 CFR Part 162) were pub-

lished in the FEDERAL REGISTER July 3, 1975, 40 FR 28242. This document reserved a section for the special packaging of pesticides. Section 25(c)(3) of amended FIFRA authorizes the Administrator of EPA to:

Establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Pub. L. 91-601)) with respect to the package, container, or wrapper in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act.

Section 2(q)(1)(B) of FIFRA states that a pesticide is misbranded if "it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to Section 25(c)(3)."

Ingestion reports to the National Clearinghouse for Poison Control Center Statistics show that pesticide ingestions for children under 5 years of age numbered over 12,000 in 1975. Pesticides have shown annual increases in the number of accidental poisonings. The number of such incidents can be substantially decreased by requiring that certain residential use products be specially packaged.

The success of special packaging of other hazardous products supports this conclusion. Within three years after the Consumer Product Safety Commission (CPSC) required child-resistant packaging for aspirin products, the total number of accidental aspirin ingestions decreased by 41% and aspirin induced deaths by 63%. Similar results were recorded after regulations were promulgated encompassing antifreeze and petroleum products.

A screening study of the economic impact of special packaging determined that the cost of compliance with this regulation would not be unreasonable. The total cost to industry, for all input variables was estimated to be \$2 million-\$5 million. This will result in an increase in cost to the consumer of 3.74 cents per product. Thus, with a small increase in product cost, this regulation will result in significant societal benefits.

Virtually all of the 27 comments received in response to the proposed regulations were favorable. However, many commenters, while agreeing in principle with the proposal, raised questions or made suggestions that convinced the Agency that some changes from the proposed rule are warranted.

DISCUSSION OF MAJOR COMMENTS

EFFECTIVE DATE

Seventeen of twenty-seven commenters state that the proposed lead time of one year is not enough. This belief was expressed by packaging manufacturers as well as pesticide manufacturers. The majority said that a minimum of two years is necessary. Some preferred three years. The major reasons for wanting to extend the effective date include the availability of safety packaging and the conversion time required for transition from conventional to safety packaging. Many comments included detailed charts of the process and time involved for each step in a transition. Based on the inability of the packaging industry to meet the new demand and the inability of registrants to perform the required testing in one year, EPA has decided to increase the lead time from one to two years. EPA believes that this two year span will be adequate and recognizes that, in addition, the long period between the proposed and final regulation allowed time for some preliminary work. The effective date applies to all products released for shipment after that date. Although this regulation is not legally enforceable for two years, EPA strongly encourages registrants to use safety packaging as soon as possible.

FEASIBILITY

Seven commenters believe that the technology to specially package pesticides is not currently available for some types of products. They said that the EPA proposal is not consistent with Section 3(a) of the Poison Prevention Packaging Act which requires the special packaging to be technically feasible, practicable, and appropriate for the substance. The preamble to the proposal stated that feasibility problems would be dealt with on a case-by-case basis in the registration process. To make this more clear, a new paragraph has been added to the regulations, § 162.16(c)(3), which says that upon the request of a registrant or applicant, and in the discretion of the Administrator, exemptions may be granted on a case-by-case basis, for products for which special packaging is not technically feasible. The request must be accompanied by supporting data. To insure fairness, if an exemption is granted, the decision will be published in the FEDERAL REGISTER and will be applicable to any product in the identical situation. Some of the factors for consideration in determining whether or not a situation is identical may include the type of formulation and size and type of container. The decision may specify a time schedule for the exemption and for studying and developing a suitable package.

If a request for an exemption is denied, the registrant must comply by the effective date.

AMENDED APPLICATION/DATA SUBMISSION

The proposed regulations would have required the registrant to submit an application for amended registration which included a full description of the package, a report of the testing protocol data, and compatibility data. Most commenters believe that the requirement to submit the data is not necessary. They pointed out the additional work the Registration Division would have reviewing the data. Several suggestions were made on how to make the requirement less burdensome. They included dropping the requirement completely, submitting only an attestation that the package will meet the standards, submitting a letter of notification, and maintaining the data records in the registrant's file while keeping them available for inspection. EPA also believes that a more streamlined process would be advantageous to the agency and registrants. Accordingly, § 162.16(e) has been changed in the final regulations. Because the registration files must be kept current, an application for amended registration indicating a change to special packaging still must be submitted. The application must include a certification that the package meets the standards of § 162.16(d). Instead of requiring the registrant to submit a detailed description of the package, protocol data, and compatibility data, this information must be retained in the registrants' files, subject to agency inspection or request for submission under new § 162.16(f) for as long as the registration is valid. This will eliminate the requirements for the registrant or applicant to submit the data and for the agency to review the data. The Agency will approve the application based on the certification in the application that the registrant has complied with all provisions.

The waiver of the requirement to submit data applies only to the information exclusively required by § 162.16. Any data that are required to be submitted by Part 162 for an amended registration (e.g. stability data) must be submitted with the application.

TEST PROTOCOL

EPA has decided to adopt the Consumer Product Safety Commission (CPSC) testing protocol by reference in § 162.16(d)(3) rather than to include it in the regulations. By doing this, any CPSC changes to the protocol will apply immediately to EPA's regulation. This will eliminate the need to amend this regulation whenever CPSC updates the protocol.

The comments included requests for clarification on several points: (1) whether a protocol test is required for each product or for each package design used; and (2) whether the registrant is required to produce its own data. Tests do not have to be run on each pesticide product, only on each special packaging design. The same protocol data on a particular special packaging design which is developed by a packaging manufacturer may be relied upon for different pesticide products and by different registrants. Testing each product's package would result in duplicative testing for many designs which would be costly and time consuming. However, in §162.16(d)(3) a requirement has been added to test each size of a closure design used. In discussions with the Consumer Product Safety Commission, EPA was advised that changing the size of a design often reduces the child-resistant effectiveness. Requiring each closure size to be tested will eliminate the possibility of an ineffective package being marketed. A complete copy of the test data, whether it is obtained from the packaging manufacturer or from the registrant's own testing, must be retained by the registrant.

Multiple use containers are permissible if the effectiveness of the special packaging continues throughout the reasonably expected lifetime of the package. Registrants who market pesticide products in unit packages have the option under §162.16(c)(4) of specially packaging each unit or marketing the unit packaging in a child-resistant container. Special packaging will not be required for both the unit package and the retail container unless the Agency receives information which would indicate that it is necessary for a particular product for safety reasons.

NON-COMPLYING PACKAGING

Ten of twenty-seven commenters believe that non-complying packaging should be allowed in at least one size. Other commenters such as the American Academy of Pediatrics commended EPA for not allowing non-complying packaging. The Agency agrees with the Academy that the toxicity of the products to be regulated is sufficient to warrant the exclusion of a convenience package. Some commenters believe that this position discriminates against the elderly and the handicapped. The Agency assumed that a person's need for a pesticide is not normally as urgent as for a drug and the person normally could arrange for someone to help him apply the pesticide. Because of this, and because less toxic pesticides would be available in non-complying packaging, the Agency believed the elderly and handicapped

would not be seriously inconvenienced. The Agency sent letters and copies of the proposal to a dozen organizations which represent the elderly or the handicapped, and requested their comments. Since only one reply was received and it supported the Agency position, EPA assumes that there are no serious disagreements with that position. Therefore, non-complying packaging will not be allowed for products which meet the criteria for special packaging.

TOXICITY CRITERIA

A small number of commenters suggested that the oral LD₅₀ criterion of 1.5 g/kg be lowered to 500 mg/kg so that only residential use products in Toxicity Categories I and II would be required to be specially packaged (§162.16(c)(2)(v)). Most commenters agreed that 1.5g/kg is an appropriate level. The calculations used to determine the acute oral LD₅₀ criterion were based on the average weight of a small child, the amount such a child could easily ingest, and a safety factor of 3. The Agency does not see a sufficient reason to lower the safety factor. For further explanation see the discussion in the preamble to the Registration, Reregistration and Classification Regulations, 40 FR 28241, 28259-28261 (1975).

Explanatory language has been added to the skin effects criterion as follows: "Is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe skin irritation (severe erythema or edema) at 72 hours" (§162.16(c)(2)(iv)). The additional wording does not change the value of the criterion, but it does provide a more exact description of the requirements.

While no commenters had objections to the skin irritation criterion itself, several believed that if it is applied to data generated under the skin irritation testing protocol in the 1975 proposed Registration Guidelines, many household products will unjustifiably be required to be specially packaged. The Registration Guidelines are currently under revision. A skin irritation testing protocol was proposed on August 22, 1978, in Subpart F (Human Hazard) of the Proposed Guidelines for Registering Pesticides, 43 FR 37335. All comments received on this proposal will be fully considered. In addition, EPA will also carefully weigh the forthcoming recommendations of the Occupational Safety and Health Administration's Standards Advisory Committee on Cutaneous Hazards. Several commenters preferred the skin irritation protocol recommendations of a June 1977 report prepared by the Committee for the Revision of National Academy of Sciences (NAS) Publication 1138, "Principles and Procedures

for Evaluating the Toxicity of Household Substances," for the Consumer Product Safety Commission under the auspices of the Committee on Toxicology of the National Research Council.

The FIFRA Scientific Advisory Panel endorsed the NAS/NRC 1138 Committee skin irritation protocol for testing consumer products. This protocol will be acceptable to EPA for determining whether or not a pesticide product must be specially packaged under this regulation. While this policy is only stated in the preamble, it will be handled more appropriately in the final Registration Guidelines. Until the Guidelines become effective, registrants should consult with the Registration Division prior to testing to discuss the applicability of that protocol to their product.

EPA received many comments which stated that the eye effects criteria were too strict. They pointed out the fact that if common soap was regulated under FIFRA, it would have to be specially packaged under the proposed eye effects criteria. FIFRA authorized the Administrator to establish special packaging standards to protect children from serious injury or illness. Many of the low degrees of corneal involvement seen in animal testing are reversible even in the sensitive eyes of the rabbit, and, therefore, do not represent a permanent impairment of vision and/or potential for serious injury.

The Agency has modified the eye effects criteria to read as follows: is corrosive to the eye (causes irreversible destruction of ocular tissue) or causes corneal involvement or irritation persisting for 21 days or more (§162.16(c)(3)(iii)). The new criteria will require an observation period of 21 days which is consistent with the eye irritation protocol proposed in the Human Hazard Guidelines which requires an observation period of at least 13 days or until all signs of reversible toxicity subside.

Several commenters preferred the eye irritation protocol recommendations of the NAS/NRC 1138 Committee which were also endorsed by the FIFRA Scientific Advisory Panel. The NAS/NRC 1138 Committee eye irritation protocol will also be acceptable for determining whether or not a pesticide product must be specially packaged. As stated above regarding the skin irritation protocol, until the use of this eye irritation protocol is formally adopted in the Registration Guidelines, registrants should consult with the Registration Division prior to testing to discuss the applicability of that protocol to their product.

Some of the comments included questions regarding the use of human and monkey test data. Although EPA does not require the use of human

subjects for testing and does not want to encourage their use, if relevant human test data are submitted, the results will take precedence over animal testing results. There are differing opinions regarding the advisability of allowing monkey test data to take precedence over the rabbit test data, and the Agency was unable to reach a decision without further review. This question has been addressed by the NAS/NRC 1138 Committee which concluded that the monkey is the second species of choice. This issue can be more appropriately treated in the Registration Guidelines and the Agency would like to specifically solicit comments on this point. Until a decision is reached, any monkey test data that is submitted will be taken into consideration by the Agency, but will not automatically take precedence.

APPLICABILITY

This regulation applies to products intended for residential use, which meet the toxicity criteria, and which have not been classified for restricted use. The definition of residential use is identical to the definition of domestic use in 40 CFR 162.3(m), except that residential use does not include patient care areas of health-related institutions. This regulation does not apply to products labeled exclusively for commercial or agricultural application, since such products are not available for retail sale to the general public. Residential use is determined by whether a product has a use on the label which falls within the meaning of residential use.

FUTURE REVIEW AND REGULATION

Section 25(c)(3) of FIFRA authorizes the Administrator to establish packaging standards to protect children and adults. This special packaging regulation is designed primarily to protect children under five years of age, but it is hoped that special packaging also will protect adults and older children from accidental or negligent exposure to pesticides. The Agency strongly encourages registrants to voluntarily develop safer packaging to lessen those hazards not directly addressed by this rule to avoid the necessity of further regulation.

EPA is particularly concerned about such packaging problems as breakability and puncturability. A child-resistant closure would not necessarily avoid hazard to children if it is on a glass bottle that will break easily. A broken package could result in the contents being spilled on a person or result in the inhalation of toxic fumes. EPA will be evaluating whether to establish breakability or other standards. Information on the frequency of injuries involving skin contact and inhalation will be obtained over a two

year period from CPSC under a new Interagency Agreement regarding data collection. EPA would also like persons who have had accidents of this type to inform the Agency so that they can be taken into account.

The poison control statistics from the National Clearinghouse for Poison Control Centers showed a 63% reduction in aspirin-induced deaths of preschool children in the three year period following the promulgation of the CPSC special packaging regulations for aspirin products. EPA will make a similar review of this regulation three years after the effective date to evaluate its effectiveness and to determine whether or not it should remain in effect.

INFLATION IMPACT STATEMENT

The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

STATUTORY REVIEW

The FIFRA Scientific Advisory Panel reviewed the final regulation in accordance with section 25(d) of FIFRA at a meeting on October 3, 1978, and unanimously concurred with its publication. The Scientific Advisory Panel report is published in its entirety following the test of the regulation. The U.S. Department of Agriculture has reviewed the final regulation in accordance with Section 25(a) of FIFRA and concurs with its publication in the FEDERAL REGISTER without comment.

Dated: February 2, 1979.

BARBARA BEUM,
Acting Administrator.

Part 162, Chapter I, Title 40 of the Code of Federal Regulations is amended by adding §162.16 to read as follows:

§162.16 Pesticides requiring special packaging.

(a) *General.* This section implements Section 25(c)(3) of the Act, which authorizes the Administrator to establish standards with respect to the package, container or wrapping in which a pesticide or device is enclosed in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act.

(b) *Definitions.* Terms used in this section shall have the same meaning set forth in the Act and in §162.3. In addition, as used in this section:

(1) The term "package" means the immediate container or wrapping in which any pesticide is contained for

consumption, use or storage. "Package" does not include:

(i) Any shipping container or wrapping used solely for the transportation of any pesticide in bulk or in quantity to manufacturers, packers or processors, or to wholesale or retail distributors thereof; or

(ii) Any shipping container or other wrapping used by retailers to ship or deliver any pesticide to consumers unless it is the only such container or wrapping.

(2) The term "residential application" means application of a pesticide (other than application by a commercial applicator) directly to humans or pets or application of a pesticide in, on or around all structures, vehicles or areas associated with the household or homelife or non-commercial areas where children spend time, including, but not limited to:

(i) Gardens, non-commercial greenhouses, yards, patios, houses, pleasure marine craft, mobile homes, campers and recreational vehicles, non-commercial campsites, home swimming pools and kennels;

(ii) Articles, objects, devices or surfaces handled or contacted by humans or pets in all structures, vehicles or areas listed above; and

(iii) Educational, lounging and recreational areas of preschools, nurseries and day camps.

(3) The term "special packaging" means packaging that is designed and constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time, and that is not difficult for normal adults to use properly.

(4) The term "unit package" means a package that is labeled with directions to use the contents in a single application or which consists of individually packaged dosage units.

(c) *Pesticides requiring special packaging.*—(1) *General.* Any pesticide product that is released for shipment after insert date 2 years from date of publication shall be specially packaged if (i) its labeling allows residential use, (ii) it has not been classified for restricted use and (iii) it meets the toxicity criteria in paragraph (c)(2) of this section. Special packaging may be required on a case-by-case basis for pesticide products which are classified for restricted use, if the Administrator determines that there is a serious hazard of accidental injury or illness which special packaging could reduce.

(2) *Criteria for special packaging.* Special packaging is required for a pesticide product approved for residential application if the tests conducted in accordance with Part 162 indicate that the pesticide formulation:

(i) Has an acute dermal LD50 of 2000 mg/kg or less;

(ii) Has an inhalation LC50 of 2 mg/liter or less;

(iii) Is corrosive to the eye (causes irreversible destruction of ocular tissue) or causes corneal involvement or irritation persisting for 21 days or more;

(iv) Is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe skin irritation (severe erythema or edema) at 72 hours;

(v) Has an acute oral LD50 of 1.5 g/kg or less; or

(vi) Has such characteristics that, based upon human toxicological data, use history, accident data or such other evidence as is available, the Administrator determines that there is a serious hazard of accidental injury or illness which special packaging could reduce.

(3) *Exemptions.* Upon the request of a registrant or applicant the Administrator may on a case-by-case basis, grant an exemption, based on supporting data accompanying the request, for products for which special packaging is not technically feasible or for those pesticides for which the hazards indicated by the toxicity criteria in paragraph (c)(2) of this section are not indicative of hazard to man. Any such decision shall be published in the Federal Register and shall be applicable to any product with identical or substantially similar composition and intended uses.

(4) *Unit packaging.* Pesticides requiring special packaging and which use unit packaging shall either package each unit package in a special package or use special packaging for the retail container which contains unit packages. Special packaging will not be required for both the outer container and the unit packages unless, on a case-by-case basis, further information shows that it is necessary for hazard reduction.

(d) *Standards for special packaging.*—(1) *General requirements.* (i) The special packaging must continue to function with the effectiveness specifications set forth in paragraph (2) of this section when in actual use as a pesticide container. This requirement may be satisfied by appropriate scientific evaluation of the compatibility of the substance with the special packaging to determine that the chemical and physical characteristics of the substance will not compromise or interfere with the proper functioning of the special packaging and that the packaging will not be detrimental to the integrity of the product during storage and use.

(ii) The special packaging must continue to function with the effectiveness specified in paragraph (2) of this

section for the reasonably expected lifetime of the package, taking into account the number of times the package is customarily opened and closed. This requirement may be satisfied by appropriate technical evaluation based on physical wear and stress factors, force required for activation, and other relevant factors.

(2) *Effectiveness specifications.* The special packaging, when tested by the method referred to in paragraph (3) of this section, shall meet the following specifications:

(i) Child-resistant effectiveness of not less than 85 percent without a demonstration and not less than 80 percent after a demonstration of the proper means of opening the package. In the case of unit packaging, child-resistant effectiveness of not less than 80 percent.

(ii) Adult-use effectiveness of not less than 90 percent without a demonstration.

(3) *Effectiveness testing procedures.* Standards for special packaging shall be evaluated for each size of a design used pursuant to the Consumer Product Safety Commission (CPSC) protocols specified in 16 CFR 1700.20(a), (b), (c) and (d).

(e) *Submission.* The registrant of a registered pesticide which requires special packaging shall submit an application for amended registration under 162.6(b)(3). The application shall include a certification by the registrant that the package meets the standards of § 162.16(d). An applicant for a new registration shall submit a certification statement that the package meets the standards of § 162.16(d) with the application for registration.

(f) *Record keeping.* The applicant or registrant of a pesticide for which special packaging is required shall retain the records described in subsections (1), (2), and (3) below for as long as the registration is valid. These records shall be available, upon request, for inspection and copying purposes or for submission to EPA.

(1) A full description of the package including:

(i) A full description of the container including:

- (A) Its dimensions, and
- (B) Its compositions; and

(ii) A full description of the closure or special package, if appropriate, including:

- (A) The name of its manufacturer,
- (B) The manufacturer's designation (title) for the special packaging closure or the physical working of the special packaging mechanism, and
- (C) The explicit directions for proper use of the closure or special packaging and the placement of these directions on the package;

(2) A complete copy of the data resulting from the tests conducted in accordance with § 162.16(d); and

(3) Data demonstrating the compatibility of the pesticide formulation with the entire package to determine that the chemical and physical characteristic of the substances will not interfere with the safety and efficacy of the pesticide and the functioning of the special package.

(g) *Enforcement.* Failure to comply with this rule by its implementation date renders a pesticide misbranded under Section 2(q)(1)(B) of FIFRA, and is a violation of Section 12(a)(1)(E) of FIFRA. Registrants who violate these sections will be subject to civil and criminal penalties under Section 14 of FIFRA.

(Secs. 3 and 25(c)(3), Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516, 86 Stat. 973; Pub. L. 94-140, 89 Stat. 755; 7 U.S.C. 136 et seq.))

[FR Doc. 79-4234 Filed 2-6-79; 8:45 am]

[3510-15-M]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

PART 221—DOCUMENTATION, TRANSFER OR CHARTER OF VESSEL

Removal of Restrictions

AGENCY: Maritime Administration, Commerce.

ACTION: Final rule.

SUMMARY: The rule hereby adopted amends the regulations relating to the approval of charters of certain vessels to aliens (46 CFR 221.7 (a)(2)) and the transfer of U.S. privately owned vessels to foreign registry or ownership or both (46 CFR 221.7 Appendix IIA.(3)(c) and 46 CFR 221.7 Appendix IIB.(3)) with respect to "Communist China" (properly with People's Republic of China). The amendments delete the prohibitory language and will permit transactions with the People's Republic of China.

EFFECTIVE DATE: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Burton T. Kyle, Director, Office of Domestic Shipping (202) 377-5157.

SUPPLEMENTARY INFORMATION: Title 46, Code of Federal Regulations, § 221.7 (a)(2) prohibits the carriage of cargoes of any kind to or from Communist China; § 221.7 Appendix, Section IIA. (3)(c) prohibits the charter-

ing of a vessel to aliens for carriage of cargoes of any kind to Communist China; and § 221.7 Appendix, Section II.B. (3) prohibits the sale of scrap resulting from the demolition of a vessel to Communist China. The nature of the action being taken is the deletion of the prohibitory restriction against "Communist China" (properly People's Republic of China). The standard form of the foreign transfer contract and of the charter order are being amended to reflect the deletion of prohibitory restriction against the People's Republic of China. Persons with outstanding foreign transfer contracts and orders will be contacted individually in the near future in order to effect the removal of terms prohibiting dealings with the People's Republic of China. Parties interested in immediate deletion of this restriction from their contracts and orders should contact the Foreign Transfer Officer, Maritime Administration Washington, D.C. 20230, Telephone (202) 377-3213.

This amendment to Part 221 has been reviewed in accordance with Executive Order 12044 "Improving Government Regulations" (43 FR 12661, March 24, 1978) and Department Administrative Order 218-7, "Issuing Government Regulations" (44 FR 2082, January 9, 1979). Since these amendments are being made to be consistent with Presidential actions related to the exercise of a foreign affairs function, publication is in the form of a final rule.

Accordingly, Part 221 of Title 46, Code of Federal Regulations is amended as follows:

§ 221.7 [Amended]

1. Section 221.7 (a)(2) is amended to delete the phrase "Communist China,".

2. Section 221.7 Appendix, Section II.A. (3)(c) is amended to delete the phrase "Communist China".

3. Section 221.7 Appendix, Section II.B. (3) is amended to delete the phrase "Communist China".

(Secs. 9, 37 and 41, Shipping Act, 1916, as amended (46 U.S.C. 808, 835 and 839); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469; and Department of Commerce Organization Order 10-8 (36 FR 19707, July 23, 1975).)

Dated: February 1, 1979.

By order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-4210 Filed 2-6-79; 8:45 am] a

[3510-15-M]

SUBCHAPTER H—TRAINING

PART 310—MERCHANT MARINE TRAINING

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

VACANCIES AND APPOINTMENTS

AGENCY: Maritime Administration.

ACTION: Final rule.

SUMMARY: The Maritime Administration amends its regulations relating to the use of State vacancies and the process for making additional appointments to the U.S. Merchant Marine Academy. The purpose of this amendment is to implement a recommendation of a Congressional Ad Hoc Select Subcommittee on Maritime Education and Training to limit State vacancies to residents of a State. Also, it provides for an annual needs assessment for the purposes of making a limited number of additional appointments.

EFFECTIVE DATE: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Erich J. Bernhardt, Academies Program Officer, Maritime Administration, Office of Maritime Manpower, Main Commerce Building, Washington, D.C. 20230, (202) 377-2095.

SUPPLEMENTARY INFORMATION: Part 310 of Title 46 of the Code of Federal Regulations is hereby amended. This amendment limits State vacancies to residents, and provides for an annual assessment in the selection of a limited number of additional appointments to achieve a national demographic balance and to give recognition to candidates who possess qualities deemed to be of special value to the Academy in the pursuit of its mission.

This amendment has been determined not to be a significant regulation within the scope of E.O. 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978), as implemented by criteria in Appendix F of a Notice in the FEDERAL REGISTER of January 9, 1979, (43 FR 23184), as amended. Therefore, this amendment to the Merchant Marine Training Regulations is adopted without notice of proposed rule making.

Part 310 of Title 46 of the Code of Federal Regulations is amended by revising paragraph (e) of § 310.52 to read as follows:

§ 310.52 Nominations and vacancies.

(e) *Appointments.* The Assistant Secretary of Commerce for Maritime Affairs will make appointments to fill the vacancies prescribed by paragraph (b) of this section from among qualified nominees, in order of merit, from each geographical subdivision listed in paragraph (b) of this section. The order of merit will be established by procedure as specified in § 310.56(b). Such appointments will be made first from among residents of each geographic subdivision listed in paragraph (b) of this section, and second from among remaining qualified nominees (national alternates) in order of merit without regard or reference to State of residence or State of the nominating authority. Further, a limited number of additional appointments may be made annually from the national alternate list of qualified nominees, with special attention given to achieving a national demographic balance and to recognize individuals possessing qualities deemed to be of special value to the Academy in the pursuit of its mission. The number of additional appointments will be based on an annual assessment.

(Section 204(b), Merchant Marine Act, 1936, as amended (49 Stat. 1987, 46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 842) as amended by Public Law 91-469 (84 Stat. 1036). Department of Commerce Order 10-8 (38 FR 19707, July 23, 1973).)

(Catalog of Federal Domestic Assistance Program No. 11-0507, U.S. Merchant Marine Academy (Kings Point).)

Dated: February 1, 1979.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-4209 Filed 2-6-79; 8:45 am]

[4910-22-M]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

PART 25—RELOCATION ASSISTANCE AND LAND ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Appendix A—Schedule of Moving Expense Allowances; Individuals and Families

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to update the moving expense schedules for persons displaced from their homes, businesses, or farms by Federal and Federally-assisted programs. This amendment incorporates changes in the schedules for Indiana, Louisiana, North Dakota and Wisconsin.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

John Murnane, Relocation Assistance Division, Office of Right-of-Way (202-426-0156); or Reid Alsop, Office of the Chief Counsel (202-426-0800), Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours Monday-Friday from 7:45 a.m. to 4:15 p.m. ET.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense schedule. To insure statewide uniformity among all agencies operating under the Act, General Services Administration Regulations, 41 CFR Part 101-6, provide in 101-6.105-1 that the schedule shall be maintained by the respective State highway departments, and approved and disseminated by the Federal Highway Administration.

The regulations of the Office of the Secretary, 49 CFR 25.153, implementing the Uniform Act, directs the Federal Highway Administration to establish and maintain the moving expense schedule in Appendix A to Part 25 of Title 49 and to update it semi-annually. The purpose of this amendment is to revise the current schedule, which was published on August 1, 1978 (43 FR 33725) to reflect changes in the moving expense schedules of the following States:

Table I—Personalty—Indiana, Louisiana, North Dakota and Wisconsin.

Table II—Mobile Homes—Louisiana and North Dakota.

Issued on: January 26, 1979.

KARL S. BOWERS,
Federal Highway Administrator.

RULES AND REGULATIONS

[4910-22-C]

Appendix A

Title 49--Transportation
Table I--Personalty

State	Occupant provides furniture										Occupant does not provide furniture	
	Number of rooms of furniture										First room	Each additional room
	1	2	3	4	5	6	7	8	9	10		
Alabama ¹	70	110	150	190	230	270	300	.....			(See end of table)	
Alaska.....	75	150	200	250	275	300	.....				15	15
Arizona.....	50	100	150	200	250	300	.....				25	15
Arkansas.....	70	110	150	190	230	270	300	.....			40	20
California.....	75	100	150	200	250	300	.....				25	15
Colorado.....	120	180	240	300	.....						30	20
Connecticut.....	50	90	140	170	230	260	300	.....			15	15
Delaware.....	60	100	140	180	220	260	300	.....			25	15
District of Columbia.....	100	135	170	210	250	290	300	.....			35	15
Florida.....	60	90	120	150	180	210	240	270	300	.....	20	10
Georgia.....	55	95	130	170	200	260	300	.....			30	10
Guam.....	48	85	120	168	205	240	300	.....			10	10
Hawaii.....	65	100	135	175	215	255	295	300	.....		45	30
Idaho.....	60	100	140	180	220	260	300	.....			20	10
Illinois.....	50	100	150	200	250	300	.....				25	15
Indiana.....	50	100	150	200	250	300	.....				25	15
Iowa.....	75	140	195	240	275	300	.....				30	12
Kansas.....	60	120	180	240	300	.....					30	10
Kentucky.....	50	90	130	170	210	250	290	300	.....		20	15
Louisiana.....	60	100	140	180	220	260	300	.....			40	15
Maine.....	50	90	125	150	175	200	225	250	275	300	15	10
Maryland.....	80	110	145	185	230	275	300	.....			20	10
Massachusetts.....	60	130	150	190	225	250	275	300	.....		25	15
Michigan.....	65	130	180	240	300	.....					50	10
Minnesota.....	75	125	175	225	250	275	300	.....			30	15
Mississippi.....	75	100	160	210	260	300	.....				40	20
Missouri.....	50	100	150	200	250	300	.....				25	10
Montana.....	55	85	115	145	175	200	225	250	275	300	25	15
Nebraska.....	50	100	150	200	250	300	.....				30	10
Nevada.....	50	100	150	200	250	300	.....				25	15
New Hampshire.....	50	100	125	150	175	200	225	250	275	300	25	15
New Jersey.....	80	140	195	245	300	.....					25	15
New Mexico ²	105	155	205	255	300	.....					(See end of table)	
New York.....	80	130	175	215	250	275	300	.....			25	15
North Carolina.....	60	100	140	180	220	260	300	.....			30	20
North Dakota.....	75	125	150	200	250	275	300	.....			30	15
Ohio.....	50	100	150	200	250	300	.....				30	10
Oklahoma.....	50	85	120	155	190	225	260	300	.....		40	15
Oregon.....	60	120	180	240	300	.....					20	20
Pennsylvania.....	60	105	150	195	240	285	300	.....			20	20
Puerto Rico.....	75	105	135	165	195	225	250	275	300	.....	25	25
Rhode Island.....	50	90	125	150	175	200	225	250	275	300	25	10
South Carolina.....	95	125	165	205	235	250	270	300	.....		15	10
South Dakota.....	75	130	175	210	240	290	300	.....			40	10
Tennessee.....	75	100	150	200	250	300	.....				25	15
Texas.....	50	85	120	150	185	220	260	300	.....		30	15
Utah.....	75	100	130	155	180	210	240	270	300	.....	25	15
Vermont.....	50	90	125	150	175	200	225	250	275	300	25	10
Virginia.....	60	80	120	160	200	240	280	300	.....		30	10
Virgin Islands.....	105	150	195	240	275	300	.....				35	35
Washington ³	70	120	150	180	210	240	270	300	.....		20	10
West Virginia ⁴	60	100	140	180	220	260	300	.....			25	10
Wisconsin.....	60	120	170	220	260	300	.....				30	15
Wyoming.....	50	85	120	150	185	225	265	300	.....		30	15

¹Furnished units including sleeping rooms. Occupant does not own furniture. First Room \$25 2 Rooms \$40 3 Rooms \$60 4 Rooms \$75 5 Rooms \$95 Each Additional Room \$15

²Furnished units including sleeping rooms. Occupant does not own furniture. First Room \$45 2 Rooms \$86 3 Rooms \$107 4 Rooms \$128 5 Rooms \$149 6 Rooms \$170 7 Rooms \$191 8 Rooms \$212 9 Rooms \$233 10 Rooms \$254

to a maximum of \$300

³For mobile homes (whether or not occupant provides furniture):

First room	Each additional room
\$50	\$25

⁴Where occupant does not provide furniture, allowance for 2 rooms is \$40.

RULES AND REGULATIONS

7703

Subtitle A--Office of the Secretary of Transportation

App. A

Table II--Mobile Homes

State	Miles (Kilometres)		Area--Square Feet (Square Metres)		Width--Feet (Metres)		Allowance Dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Alabama.....			0 (0)	200 (18.6)			140
			200 (18.6)	400 (37.2)			190
			400 (37.2)	600 (55.8)			240
			600 (55.8)	800 (74.4)			280
			800 (74.4)				300
Alaska.....All trailers.....							300
Arizona.....	0 (0)		300 (27.9)				150
	300 (27.9)	400 (37.2)					200
	400 (37.2)	500 (46.5)					250
	500 (46.5)						300
Arkansas.....					0 (0)	12 (3.7)	200
					12 (3.7)	14 (4.3)	250
					14 (4.3)		300
California ¹					0 (0)	8 (2.4)	(see 1-end of table)
					8 (2.4)		(see 2-end of table)
Colorado ²							
Connecticut ³					0 (0)	8.5 (2.6)	100
					8.5 (2.6)	10.5 (3.2)	150
					10.5 (3.2)	12.5 (3.8)	200
					12.5 (3.8)		250
Delaware.....	0 (0)		400 (37.2)				100
	400 (37.2)	600 (55.8)					150
	600 (55.8)	800 (74.4)					200
	800 (74.4)	1,000 (93)					250
	1,000 (93)						300
Florida.....	0 (0)		200 (18.6)				100
	200 (18.6)	400 (37.2)					150
	400 (37.2)	600 (55.8)					200
	600 (55.8)	850 (79.1)					250
	850 (79.1)						300
Georgia.....	0 (0)		400 (37.2)				95
	400 (37.2)	500 (46.5)					125
	500 (46.5)	600 (55.8)					185
	600 (55.8)	850 (79.1)					245
	850 (79.1)						300
Guam.....	0 (0)		300 (27.9)				130
	300 (27.9)	400 (37.2)					180
	400 (37.2)	500 (46.5)					210
	500 (46.5)	600 (55.8)					240
	600 (55.8)	700 (65.1)					270
	700 (65.1)						300
Hawaii.....	0 (0)		300 (27.9)				130
	300 (27.9)	400 (37.2)					180
	400 (37.2)	500 (46.5)					210
	500 (46.5)	600 (55.8)					240
	600 (55.8)	700 (65.1)					270
	700 (65.1)						300
Idaho.....	0 (0)		200 (18.6)				100
	200 (18.6)	400 (37.2)					150
	400 (37.2)	600 (55.8)					200
	600 (55.8)	800 (74.4)					250
	800 (74.4)						300
Illinois..... 0 (0) 24 (38.6)					0 (0)	8.5 (2.6)	100
					8.5 (2.6)	10.5 (3.2)	150
					10.5 (3.2)	12.5 (3.8)	200
					12.5 (3.8)		250
24 (38.6) 50 (80.5)					0 (0)	8.5 (2.6)	150
					8.5 (2.6)	10.5 (3.2)	200
					10.5 (3.2)	12.5 (3.8)	250
					12.5 (3.8)		300

See footnotes at end of table.

RULES AND REGULATIONS

Subtitle A--Office of the Secretary of Transportation

App. A

Table II--Mobile Homes

State	Miles (Kilometres)		Area--Square Feet (Square Metres)		Width--Feet (Metres)		Allowance Dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Indiana.....					0 (0)	8.5 (2.6)	150
					8.5 (2.6)	10.5 (3.2)	185
					10.5 (3.2)	12.5 (3.8)	250
					12.5 (3.8)	.....	300
Iowa.....	0 (0)	25 (40.2)			0 (0)	8 (2.4)	130
					8 (2.4)	10 (3)	150
					10 (3)	12 (3.7)	180
					12 (3.7)	.....	230
	25 (40.2)	50 (80.5)			0 (0)	8 (2.4)	140
					8 (2.4)	10 (3)	170
					10 (3)	12 (3.7)	200
					12 (3.7)	.....	300
Kansas.....			0 (0)	200 (18.6)			80
			200 (18.6)	400 (37.2)			160
			400 (37.2)	600 (55.8)			240
			600 (55.8)	.....			300
Kentucky ⁴					0 (0)	8 (2.4)	240
					8 (2.4)	10 (3)	285
					10 (3)	12 (3.7)	300
Louisiana.....					0 (0)	10 (3)	175
					10 (3)	12 (3.7)	200
					12 (3.7)	14 (4.3)	250
					14 (4.3)	.....	300
Maine.....					0 (0)	8 (2.4)	150
					8 (2.4)	10 (3)	200
					10 (3)	12 (3.7)	250
					12 (3.7)	.....	300
Maryland.....			0 (0)	200 (18.6)			110
			200 (18.6)	400 (37.2)			140
			400 (37.2)	600 (55.8)			165
			600 (55.8)	800 (74.4)			195
			800 (74.4)	1,000 (93)			220
			1,000 (93)	1,200 (111.6)			250
			1,200 (111.6)	.....			300
Massachusetts.....			0 (0)	200 (18.6)			80
			200 (18.6)	400 (37.2)			140
			400 (37.2)	600 (55.8)			200
			600 (55.8)	.....			300
Michigan.....					0 (0)	8 (2.4)	145
					8 (2.4)	10 (3)	230
					10 (3)	12 (3.7)	280
					12 (3.7)	.....	300
Minnesota ⁴	0 (0)	10 (16)			0 (0)	10 (3)	125
					10 (3)	12 (3.7)	135
					12 (3.7)	14 (4.3)	150
					14 (4.3)	.....	175
	10 (16)	25 (40.2)			0 (0)	10 (3)	130
					10 (3)	12 (3.7)	140
					12 (3.7)	14 (4.3)	155
					14 (4.3)	.....	185
	25 (40.2)	50 (80.5)			0 (0)	10 (3)	140
					10 (3)	12 (3.7)	150
					12 (3.7)	14 (4.3)	175
					14 (4.3)	200

See footnotes at end of table.

RULES AND REGULATIONS

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Subtitle A--Office of the Secretary of Transportation

App. A

Table II--Mobile Homes

State	Miles (Kilometres)		Area--Square Feet (Square Metres)		Width--Feet (Metres)		Allowance Dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Mississippi.....			0 (0)	300 (27.9)			150
			300 (27.9)	400 (37.2)			200
			400 (37.2)	500 (46.5)			250
			500 (46.5)				300
Missouri.....			0 (0)	200 (18.6)			100
			200 (18.6)	400 (37.2)			150
			400 (37.2)	600 (55.8)			200
			600 (55.8)	800 (74.4)			250
			800 (74.4)				300
Montana ⁴					0 (0)	10 (3)	135
					10 (3)	12 (3.7)	150
					12 (3.7)	14 (4.3)	175
					14 (4.3)		225
Nebraska.....			0 (0)	400 (37.2)			100
			400 (37.2)	600 (55.8)			150
			600 (55.8)	800 (74.4)			200
			800 (74.4)	1,000 (93)			250
			1,000 (93)				300
Nevada.....			0 (0)	400 (37.2)			150
			400 (37.2)	500 (46.5)			200
			500 (46.5)	600 (55.8)			250
			600 (55.8)				300
New Hampshire.....	All Mobile Homes						300
New Jersey.....			0 (0)	200 (18.6)			100
			200 (18.6)	400 (37.2)			150
			400 (37.2)	600 (55.8)			200
			600 (55.8)	800 (74.4)			250
			800 (74.4)				300
New Mexico ^{4,5}	0 (0)	20 (32.2)			0 (0)	8.5 (2.6)	141
					8.5 (2.6)	10.5 (3.2)	181
					10.5 (3.2)	12.5 (3.8)	191
					12.5 (3.8)		231
	20 (32.2)	50 (80.5)			0 (0)	8.5 (2.6)	161
					8.5 (2.6)	10.5 (3.2)	191
					10.5 (3.2)	12.5 (3.7)	206
					12.5 (3.7)		246
New York.....			0 (0)	300 (27.9)			150
			300 (27.9)	500 (46.5)			200
			500 (46.5)	700 (65.1)			250
			700 (65.1)				300
North Carolina ^{4,6}					0 (0)	10 (3)	150
					10 (3)	12 (3.7)	200
					12 (3.7)		300
North Dakota.....			0 (0)	200 (18.6)			125
			200 (18.6)	400 (37.2)			175
			400 (37.2)	600 (55.8)			225
			600 (55.8)	800 (74.4)			275
			800 (74.4)				300

See footnotes at end of table.

RULES AND REGULATIONS

Subtitle A--Office of the Secretary of Transportation

App. A

Table II--Mobile Homes

State	Miles (Kilometres)		Area--Square Feet (Square Metres)		Width--Feet (Metres)		Allowance Dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Ohio ⁴	0 (0)	10 (16)	0 (0)	320 (29.8)	.....	.....	130
			320 (29.8)	500 (46.5)	.....	.....	150
			500 (46.5)	840 (78.1)	.....	.....	170
			840 (78.1)	1,120 (104.2)	.....	.....	205
			1,120 (104.2)	.....	.....	.....	250
10 (16) 25 (40.2)			0 (0)	320 (29.8)	.....	.....	135
			320 (29.8)	500 (46.5)	.....	.....	155
			500 (46.5)	840 (78.1)	.....	.....	190
			840 (78.1)	1,120 (104.2)	.....	.....	220
			1,120 (104.2)	.....	.....	.....	275
25 (40.2) 50 (80.5)			0 (0)	320 (29.8)	.....	.....	145
			320 (29.8)	500 (46.5)	.....	.....	165
			500 (46.5)	840 (78.1)	.....	.....	200
			840 (78.1)	1,120 (104.2)	.....	.....	250
			1,120 (104.2)	.....	.....	.....	300
Oklahoma.....					0 (0)	10 (3)	150
					10 (3)	12 (3.7)	175
					12 (3.7)	14 (4.3)	225
					14 (4.3)	.....	275
Oregon.....			0 (0)	200 (18.6)	.....	.....	100
			200 (18.6)	600 (55.8)	.....	.....	200
			600 (55.8)	.....	.....	.....	300
Pennsylvania.....			0 (0)	300 (27.9)	.....	.....	130
			300 (27.9)	500 (46.5)	.....	.....	225
			500 (46.5)	800 (74.4)	.....	.....	275
			800 (74.4)	.....	.....	.....	300
Rhode Island.....					0 (0)	8 (2.4)	225
					8 (2.4)	10 (3)	250
					10 (3)	12 (3.7)	275
					12 (3.7)	.....	300
South Carolina ⁴					0 (0)	10 (3)	140
					10 (3)	12 (3.7)	150
South Dakota.....					0 (0)	10 (3)	230
					10 (3)	12 (3.7)	270
					12 (3.7)	.....	300
Tennessee ⁴					0 (0)	10 (3)	100
					10 (3)	.....	150
Texas.....					0 (0)	8.5 (2.6)	165
					8.5 (2.6)	10.5 (3.2)	210
					10.5 (3.2)	12.5 (3.8)	255
					12.5 (3.8)	14.5 (4.4)	300
Utah ⁴	0 (0)	10 (16)			0 (0)	8 (2.4)	140
					8 (2.4)	10 (3)	145
					10 (3)	12 (3.7)	165
					12 (3.7)	.....	200
	10 (0)	25 (40.2)			0 (0)	8 (2.4)	145
					8 (2.4)	10 (3)	155
					10 (3)	12 (3.7)	175
					12 (3.7)	.....	225

See footnotes at end of table.

RULES AND REGULATIONS

7707

Subtitle A--Office of the Secretary of Transportation

App. A

Table II--Mobile Homes

State	Miles (Kilometres)		Area--Square Feet (Square Metres)		Width--Feet (Metres)		Allowance Dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Utah--Continued...	25 (40.2)	50 (80.5)	.....	.....	0 (0)	8 (2.4)	150
			.....	.....	8 (2.4)	10 (3)	160
			.....	.....	10 (3)	12 (3.7)	190
			.....	.....	12 (3.7)	.....	250
Vermont ⁷ .....			.....	.....	0 (0)	8 (2.4)	155
			.....	.....	8 (2.4)	10 (3)	185
			.....	.....	10 (3)	12 (3.7)	215
			.....	.....	12 (3.7)	.....	250
Virginia.....			0 (0)	200 (18.6)	.....	.....	150
			200 (18.6)	400 (37.2)	.....	.....	200
			400 (37.2)	600 (55.8)	.....	.....	250
			600 (55.8)	800 (74.4)	.....	.....	300
Washington ⁸			0 (0)	200 (18.6)	.....	.....	100
			200 (18.6)	400 (37.2)	.....	.....	150
			400 (37.2)	600 (55.8)	.....	.....	200
			600 (55.8)	800 (74.4)	.....	.....	250
			800 (74.4)	.....	.....	.....	300
West Virginia.....			0 (0)	300 (27.9)	.....	.....	100
			300 (27.9)	450 (41.9)	.....	.....	150
			450 (41.9)	550 (51.2)	.....	.....	225
			550 (51.2)	.....	.....	.....	300
Wisconsin.....			.....	.....	0 (0)	8 (2.4)	150
			.....	.....	8 (2.4)	10 (3)	200
			.....	.....	10 (3)	12 (3.7)	250
			.....	.....	12 (3.7)	.....	300
Wyoming ⁴ .....			.....	.....	0 (0)	8.5 (2.6)	135
			.....	.....	8.5 (2.6)	10.5 (3.2)	165
			.....	.....	10.5 (3.2)	12.5 (3.8)	185
			.....	.....	12.5 (3.8)	.....	220

¹Width to 8' (2.4 m) Length 40' (12.2 m).....\$200
Length 40' (12.2 m).....\$300
Width over 8' (2.4 m) Length 40' (12.2 m).....\$300
Length 40'+ (12.2 m).....\$300

²Under 8' (2.4 m) x 40' (12.2 m) - Unskirted \$150
Over 8' (2.4 m) x 40' (12.2 m) - \$300

³Plus \$50 for expandable trailer.

⁴\$300 for double trailer.

⁵Escort fee included.

⁶Personalty Only

Width-----	Under 10 feet (3 m)	10 feet (3 m)	12 feet (3.7 m) and over	Doubles
	\$50	\$60	\$80	\$150

⁷\$50 for extras.

⁸Personalty Only

First room.....\$50
Each additional room.....\$25

IFR Doc. 79-3978 Filed 2-6-79; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Opening of Upper Souris National Wildlife Refuge, N. Dak., to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Upper Souris National Wildlife Refuge is compatible with the objective for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: May 5, 1979 through March 23, 1980.

FOR FURTHER INFORMATION CONTACT:

Maurice B. Wright, Refuge Manager, Upper Souris National Wildlife Refuge, RR No. 1, Foxholm, North Dakota 58738 (701-468-5634).

SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Sport fishing is permitted on the Upper Souris National Wildlife Refuge, North Dakota, only on the areas designated by signs as being open to fishing. These areas comprising 12,000 acres are delineated on maps available at the Refuge Headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, P.O. Box 1897, Bismarck, North Dakota 58501. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) The refuge is open to fishing between the hours of 5:00 a.m. and 10:00 p.m. daily.

(2) Any boat motor or combination of boat motors may be attached to boats or other watercraft being used on refuge waters. Only those motors or combination of motors capable of developing a total of 10 horsepower or less may be used.

(3) Boats are permitted only from May 5 through September 30, 1979.

(4) Ice fishing will be permitted in designated areas from Dam #41 south to Baker Bridge and from Mouse River Park north to the refuge boundary. Fish houses and vehicles however will not be permitted on the river below

the Lake Darling Dam, nor north of Mouse River Park.

(5) No open fires are permitted, nor is cutting of trees, taking of minnows and frogs or digging of worms.

(6) Operation of snowmobiles within the refuge boundary is prohibited.

(7) Fish houses must be removed from the refuge no later than March 2, 1980.

(Sec. 2, 33 Stat. 614, as amended; sec. 5, 43 Stat. 651; sec. 5, 45 Stat. 449; sec. 10, 45 Stat. 1224; sec. 4, 48 Stat. 402, as amended; sec. 4, 48 Stat. 451, as amended; sec. 2, 48 Stat. 1270; sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a; 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb.)

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Date: January 29, 1979.

MAURICE B. WRIGHT,
Refuge Manager.

[FR Doc. 79-4105 Filed 2-6-79; 8:45 am]

[3510-22-M]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 602—GUIDELINES FOR DEVELOPMENT OF FISHERY MANAGEMENT PLANS

Interim Regulations

AGENCY: National Oceanic and Atmospheric Administration/National Marine Fisheries Service.

ACTION: Interim final regulations; request for comment; notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) is promulgating interim regulations which require fishery management plans (FMP's) developed under the Fishery Conservation and Management Act of 1976, as amended (FCMA), to contain information regarding: (1) historical and projected transfers of U.S. harvested fish to foreign fishing vessels at sea, (2) the processing capacity of U.S. fish processors, and (3) the data which FMP's may require U.S. fish processors to submit to the Secretary of Commerce. NMFS seeks public comment on three subjects related to

these regulations: (1) guidelines for specifying U.S. harvesting capacity, (2) the activities which should be considered "processing" and (3) guidelines for conditioning or restricting permits of foreign fishing vessels receiving fish from U.S. harvesting vessels at sea. NMFS will hold a public hearing on the interim regulations and the related subjects which may be incorporated into future proposed rulemaking.

DATES: The interim regulations are effective February 7, 1979. Written comments on the interim regulations and the subjects identified in this Notice must be received on or before April 9, 1979. A public hearing will be held on Tuesday, March 13, 1979, at 10:00 a.m.

ADDRESSES: Comments should be submitted in writing to: Assistant Administrator for Fisheries, National Marine Fisheries Service (F37), Washington, D.C. 20235. Please mark "Joint Ventures" on the envelope.

The public hearing will be held at: Penthouse Conference Room, Page Building I, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

Mr. Alfred J. Bilik, Program Support Specialist, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634-7265.

SUPPLEMENTARY INFORMATION:

PURPOSE

On October 20, 1978, regulations were proposed to amend 50 CFR Part 602, "Guidelines for the Development of Fishery Management Plans" (43 FR 49023). The purpose of these proposed regulations was to implement Pub. L. 95-354, which amended the FCMA.

Seven written comments on the proposed regulations were received prior to the close of the comment period. After reviewing the comments received, NMFS has decided to amend the proposed regulations, put them into effect on an interim basis, and seek additional public comment on certain issues.

INTERIM FINAL REGULATIONS

Regulations to implement Pub. L. 95-354 must be in place before the Secretary can issue permits for foreign vessels to receive U.S. harvested fish during 1979. The interim regulations will allow the Secretary to weigh data on the 1979 U.S. fish processors' capacity and extent to which the processors will utilize U.S. harvested fish.

NMFS will apply the interim regulations in considering applications for foreign vessel permits to receive hake harvested by U.S. vessels in the Washington, Oregon, California trawl fishery and Alaska pollock harvested by

U.S. vessels in the Gulf of Alaska groundfish fishery.

At this time, NMFS does not expect foreign permit applications in other fisheries.

Additional comments on the interim regulations will be received until April 9, 1979. A public hearing will be held on March 13, 1979; see the "DATES" and "ADDRESSES" sections of this Notice for time and place. Final regulations will be promulgated after the additional comments have been considered. Reviewers should note that the public hearing which had been scheduled earlier on February 7 has been postponed and is now scheduled on March 13.

COMMENTS RECEIVED ON PROPOSED REGULATIONS

Several comments addressed the question of the burden imposed on the U.S. fish processing industry by reporting requirements under proposed § 602.3(b)(14)(iii). The proposed requirements include the submission of the following information for each species: amounts of fish and locations at which fish are purchased, transported, and/or processed; limitations as to seasons, quantities or quality standards which apply to fish received and/or processed; and the disposition and prices paid for the fish received and/or processed.

PRICE AND MARKET REPORTING

Particular exception was taken to revealing prices and domestic fish processors' markets. Some reviewers claimed that Congress specifically excluded prices offered by domestic processors from consideration when determinations are made of their capacity and intent to process U.S. harvested fish.

NMFS does not believe that consideration of these factors should be precluded when estimating the extent to which U.S. fish processors will receive and utilize U.S. harvested fish.

This important information should not be ignored. Instead, NMFS contends it should be considered as an element among several related factors. For example, price data alone might not be a definitive indicator of the intent of U.S. fish harvesters. However, price can be a vital component in the decision by a U.S. harvester to sell his catch to either U.S. or foreign processors. In the interim regulations however, the requirement for reporting these data by U.S. fish processors has been left to the discretion of the Regional Councils, until additional oral or written comments are received.

CONFIDENTIALITY

Some reviewers of the proposed regulations contended that submission of data on price or markets should not be

required because regulations presently reserved under Part 603 are not yet final (see 43 FR 1162; January 9, 1978). Part 603 would explain how NMFS and the Regional Fishery Management Councils will preserve the confidentiality of such information. Reviewers believe that U.S. fish processors may suffer economic damage if such information is not held confidential. Some reviewers also believe conflicts of interest will arise if unaggregated data are available to Regional Councils. NMFS's practice is that any such data required by an FMP are kept confidential under section 303(d) of the FCMA.

ADDITIONAL COMMENT INVITED ON PROCESSOR REPORTING REQUIREMENTS

After the close of the comment period on these interim regulations NMFS will issue final regulations specifying the minimum data which U.S. fish processors will be required to submit. NMFS invites comments on the following issues:

1. Information which U.S. fish processors should be required to report;
2. Circumstances in which such data should be considered; and
3. Whether Regional Councils should be given access to price, market and other data reported by U.S. fish processors in unaggregated form.

OTHER COMMENTS

Comment 1. NOAA should consider international trade barriers when decisions are made on foreign permit applications to receive U.S. harvested fish.

Response. The President, on signing P.L. 95-354 into law, noted that the provision in predecessor bills requiring consideration of this factor had been removed, and that denying permits to processors from countries with import barriers to U.S. fish and fish products "... would have conflicted directly with our trade policies."

Comment 2. Several reviewers proposed that Councils perform assessments of U.S. processing and harvesting capacity and utilization more frequently. One reviewer stated that the regulations should require that the Federal government remain neutral and that the Regional Councils reduce the optimum yield of a fishery when price or other disputes between U.S. harvesters and processors cause all or a portion of the estimated U.S. harvested to remain unharvested. When the dispute is resolved, the Regional Council should increase optimum yield to its former level.

Response. NMFS believes that an adequate mechanism to consider these matters exists under section 602.5(d)(2) which now encourages more frequent Council assessments of estimates where appropriate, of the

U.S. harvesting and processing capacities and the extent to which the fishery resources will be utilized throughout the year.

Comment 3. NMFS should give careful consideration to implementing the discretionary provisions of Section 303(b) of the FCMA related to fishing time, ocean area and season, and type and quantity of fishing gear to ensure that fishery management plans provide the maximum opportunities for development of the entire U.S. fishing industry.

Response. NMFS is not prepared at this time to address fully questions involving consistency with National Standards (4) and (5) (section 301(a)(4), (5) of the FCMA). This matter will be considered in the context of item 3 of the advance notice of proposed rulemaking.

Comment 4. The proposed regulations should identify species which traditionally have been fully utilized by U.S. fish processors as unavailable for transfer to foreign vessels.

Response. We do not expect applications from foreign nations to receive U.S. harvested fish in fisheries which historically have been utilized fully by U.S. fish processors.

Comment 5. Certain changes should be made in the proposed regulations to include the U.S. fish processing industry or the entire fishing industry in favorable considerations under Part 602.

Response. Changes to reflect industry-wide considerations have been made in the interim regulations.

Advance Notice of Proposed Rulemaking

NMFS invites public comment on the following subjects.

1. Guidelines for establishing U.S. harvesting capacity;
2. Activities which should be considered "fish processing"; and
3. Guidelines for developing conditions and restrictions on foreign fishing permits for receiving U.S. harvested fish.

These matters are not addressed in the interim regulations. However, they may be considered before promulgation of final regulations. NMFS seeks public comment, either in writing or at the public hearing announced in this Notice, before deciding whether to issue rules governing Regional Councils and NMFS on matters relating to these three issues.

The Assistant Administrator for Fisheries has determined under Department Administrative Order (DAO)281-7 that the interim regulations are not significant. This determination will be reviewed prior to promulgation of final regulations.

Signed in Washington, D.C. this 2nd day of February 1979.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries.

(16 U.S.C. 1801 et seq.)

§ 602.2 [Amended]

1. Amend 50 CFR 602.2(b)(5) by deleting the second sentence and substituting as follows:

(b) ***

(5) *** In determining whether U.S. fishermen will not harvest an optimum yield, the Councils are to consider the capacity and extent to which fishing vessels of the United States will harvest such optimum yield, including U.S. harvested fish which will be received at sea by foreign vessels.*

2. Amend § 602.2(b)(5) by adding a fourth sentence as follows:

(b) ***

(5) *** Fishery management plans and amendments to such plans shall estimate the amount of fish expected to be harvested by U.S. vessels and received at sea by foreign vessels.

§ 602.3 [Amended]

3. Amend § 602.3(b)(8)(ii) by adding the following new subparagraph (I):

(b) ***

(8) ***

(ii) ***

(I) Assessment and specification of the portion of the optimum yield which U.S. harvesters propose to deliver to foreign vessels.

4. Amend § 602.3(b)(8)(iv) by inserting "(A)" after "the fishery", and by adding a new subparagraph (B) as follows:

(b) ***

(8) ***

(iv) ***

(B) Describe and quantify the amount or tonnage of any transfers at sea, or proposed transfers, of the stock(s) comprising the management unit from U.S. harvesters to foreign vessels."

5. Amend § 602.3(b)(8) by adding the following new subparagraph (v):

(b) ***

(8) ***

(v) *Domestic processing capacity.* Assess and specify the capacity and extent to which U.S. fish processors,

on an annual basis, will process the stock(s) comprising the management unit. In assessing the extent to which U.S. fish processors will process the stock(s), the following factors, as appropriate, shall be considered:

(A) Any contracts or other agreements for the purchase of U.S. harvested fish by U.S. fish processors;

(B) The ability, and intent to utilize that ability, of U.S. processors to process a particular species;

(C) Considerations such as geographical proximity of harvest areas to the facilities of U.S. fish processors, especially in relation to the refrigeration/freezing capability of potential U.S. fish harvesting vessels;

(D) Recent history of the extent to which U.S. fish processors have processed particular species;

(E) Availability and capacity of the labor force, processing machinery, freezers and cold storage facilities of U.S. fish processors and their intent and plans to increase availability or capacity in order to process a particular species;

(F) Seasonal schedules of the U.S. fish processors; and

(G) Availability of U.S. harvesting vessels to supply the stock(s) comprising the management unit taking into consideration such things as capability of vessels to fish the species in the fishery, seasonal schedules, and relative availabilities and prices of alternative fisheries.

6. Delete § 602.3(b)(9)(ii) and substitute the following:

(b) ***

(9) ***

(ii) *Domestic processing sector.* Describe the wholesale products and their values. Specify the degree of dependence of the processing sector upon products from the fishery.

7. Amend § 602.3(b)(9)(iii) by redesignating subparagraph (iii) as (iv) and inserting a new subparagraph (iii):

(b) ***

(9) ***

(iii) *Other sectors of the U.S. fishing industry.* Describe the dependence of other sectors of the U.S. fishing industry on the fishery. Include the dependence of labor, suppliers and provisioners, as well as fishing communities.

8. Amend § 602.3(b)(13)(viii) by deleting "U.S. fishermen" and inserting "the U.S. fishing industry."

9. Amend the heading for § 602.3(b)(14)(ii) to read "(ii) *Domestic and foreign harvesters*".

10. Amend § 602.3(b)(14)(ii) by adding "numbers or weight of fish received at sea by foreign vessels from U.S. harvesting vessels." after "number of hauls".

11. Delete § 602.3(b)(14)(iii), and substitute the following:

(b) ***

(14) ***

(iii) *Processors.* The plan shall specify the data that shall be submitted by fish buyers, processors, etc., who purchase, transport, and process the catch of the stock(s). The data specified may include, but are not limited to:

(A) The amount or tonnage of fish purchased, transported, and/or processed, by species.

(B) Locations at which fish are received and/or processed, by species.

(C) Limitations as to seasons, quantities, or quality standards of fish which apply to fish received and/or processed, by species.

(D) Disposition of the fish received or processed, by species.

(E) Prices paid for fish received, by species.

(F) The amount or tonnage which the processor expects to purchase, transport, and/or process, by species, by year.

§ 602.4 [Amended]

12. Amend § 602.4(b)(8) to add the following heading:

(b) ***

(8) ***

(v) *Domestic processing capacity.*

13. Amend § 602.4(b)(14)(ii) to read: "*Domestic and Foreign Harvesters*".

§ 602.5 [Amended]

14. Amend § 602.5(d)(1) to read:

(d) ***

(1) *Council review.* The Act directs each Council to review on a continuing basis, and revise as appropriate, the assessments and specifications made regarding the optimum yield from, the capacity and extent to which U.S. fish processors will process U.S. harvested fish from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority.

15. Amend § 602.5(d)(2), second sentence, to read:

(d) ***

(2) * * * At least once each year, and more often where appropriate, each Council must assess the accuracy of the estimates of MSY and optimum yield, the capacity and extent to which U.S. fish processors will process U.S. harvested fish, and the total allowable level of foreign fishing for each plan implemented regardless of whether the plan is prepared by a Council or by the Secretary. * * *

[FR Doc. 70-4244 Filed 2-6-79; 8:45 am]

[3522-10-M]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 653—ATLANTIC HERRING

Repromulgation of Emergency Regulations

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Repromulgation of emergency regulations.

SUMMARY: The emergency regulations implementing the Atlantic Herring Fishery Management Plan are continued in effect until final regulations are promulgated, but not later than March 19, 1979.

EFFECTIVE DATE: The emergency regulations are extended from 0001 hours e.s.t. February 3, 1979 until March 19, 1979, or to the time when final regulations are promulgated, if sooner.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone: (617) 281-3600.

SUPPLEMENTARY INFORMATION: On December 28, 1978, emergency regulations were published to govern fishing for Atlantic herring (43 FR 60474). Those regulations took effect December 20, 1978, for a period of 45 days. Those regulations were also published as a proposed rulemaking to implement the Atlantic Herring FMP prepared by the New England Fishery Management Council.

The emergency regulations are hereby extended, effective 0001 hours e.s.t. February 3, 1979, to provide continued conservation of the stocks during the evaluation of public comments on proposed regulations and the preparation of final regulations. Although the emergency regulations are continued for the full 45-day period al-

lowed by law (Fishery Conservation and Management Act of 1976, section 305(e); 16 U.S.C. 1855(e)), it is anticipated that final regulations will be promulgated within a few weeks.

The Assistant Administrator for Fisheries, NOAA, has determined that the emergency in this fishery, as described at 43 FR 60475-76, continues to exist.

Signed at Washington, D.C., this the 2nd day of February, 1979.

(16 U.S.C. 1801 et seq.)

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.
[FR Doc. 79-4149 Filed 2-2-79; 2:46 pm]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1038-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Bay Area Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve changes to the Bay Area Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: March 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION: On September 8, 1978, in 43 FR 40038, EPA published a Notice of Proposed Rulemaking for revisions to the Bay Area APCD's rules and regulations submitted on July 13, 1978 by the California Air Resources Board for inclusion in the California SIP.

The changes contained in this submittal and being acted upon by this notice include the following: a change

in a reporting method in continuous monitoring systems; addition of a regulation for architectural coatings; changes in vapor control rules for stationary storage containers; and addition of a rule allowing the District access to information regarding emissions.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as SIP revisions.

A list of the rules being considered by this action was published as part of the Notice of Proposed Rulemaking. No comments were received during the 30-day public comment period.

It is the purpose of this Final Rulemaking notice to approve all changes contained in the July 13, 1978 submittal and incorporate them into the California SIP.

This final action will replace measures in the current SIP with the new measures submitted by the State to EPA for approval. Under this action, the current emission control regulations applicable to any source will remain in effect until such time as the newly revised regulation becomes effective and the source achieves full compliance with its provisions. This applies to all of the SIP revisions approved in this notice, not merely those that are subjected to judicial challenge. Failure of the source to satisfy the requirements of the effective regulation will result in appropriate enforcement actions.

Along with the approval of Regulation 9, *Architectural Coatings*, this notice rescinds the Bay Area APCD from the requirements of the Federal regulation currently applicable to architectural coatings, 40 CFR 52.254(m). Also, the approval of Regulation 2, § 3211.2, *Right of Access to Premises and Information*, rescinds the Bay Area APCD from the requirements of 40 CFR 52.234(d).

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

AUTHORITY: Sections 110 and 310(a) of the Clean Air Act as amended (42 U.S.C. Sections 7410 and 7601(a)).

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(45) is added as follows:

§ 52.220 Identification of plan.

* * *

(c) ***

(45) Revised regulations for the following APCD's submitted on July 13, 1978 by the Governor's designee.

(i) Bay Area APCD.

(A) New or amended Regulation 2, Division 3, §§ 3210.11(B), 3211.2; Regulation 3, Division 3, § 3102.1; Regulation 9.

2. Section 52.234, paragraph (a)(6) is added as follows:

§ 52.234 Source surveillance.

(a) ***

(6) San Francisco Bay Area Intra-state:

(i) Bay Area APCD.

3. Section 52.254, paragraph (a)(4) is added as follows:

§ 52.254 Organic solvent usage.

(a) ***

(4) In the following portions of the San Francisco Bay Area Region, paragraph (m) of this section is rescinded:

(i) Bay Area APCD.

[FR Doc. 79-4256 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1045-81]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Massachusetts Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Massachusetts State Implementation Plan (SIP) allowing the burning of a 30 percent coal to 70 percent oil mixture in the new England Power Company (NEPCo) Unit No. 1, Salem Harbor Station, Salem, Massachusetts, for a period of one year, as a research project funded by the U.S. Energy Research and Development Administration (ERDA).

EFFECTIVE DATE: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Victor M. Trinidad, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: On October 10, 1978, the Regional Administrator published in the FEDERAL REGISTER (43 FR 46553) a notice proposing approval of a revision to the Massachusetts SIP. The SIP revision, submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) on July 5, 1978, included variances to Massachusetts regulations 310 CMR 7.05 *Sulfur-in-fuel* and 310 CMC 7.06 *Visible Emissions*, (formerly regulations 5 & 6).

The SIP revision approved today will allow New England Power Company (NEPCo) Unit No. 1, Salem Harbor station, Salem, Massachusetts, to burn a 30 percent coal-70 percent oil mixture as a coal research and development project funded by ERDA. The plant will be burning fossil fuel with a maximum sulfur content of 1.21 pounds per million Btu release potential (approximately equivalent to 2.2 percent Sulfur content residual oil by weight) from January 1 to December 31, 1979. Also approved is a temporary relaxation of regulation 310 CMR 7.06 permitting exceedance of the 20 percent opacity limit up to fifteen minutes per hour during combustion optimization test runs; with the maximum plume opacity limited to 40 percent or No. 2 of the Ringlemann Chart.

Massachusetts Regulation 310 CMR 7.05 "Sulfur Content of Fuels and Control Thereof" was first approved as a temporary revision to the Massachusetts SIP on December 5, 1975 (40 FR 5689). Since then, SIP revisions have extended the effective period of the aforementioned regulation until July 1, 1979 (43 FR 56040).

Under the present SIP, Salem Harbor Station is allowed to burn 2.2 percent S fuel oil. However, due to opacity violations in 1976, Units 1, 2 & 3 were ordered back by the Massachusetts Department and now are burning 1 percent S fuel oil.

This approval will allow NEPCO's Unit No. 1 to burn the coal/oil mixture until December 31, 1979, six months beyond the July 1, 1979 expiration date of Regulation 310 CMR 7.05.

To prevent any nuisance condition the terms of the variance require that: (1) the project shall be commenced using: 10 percent to 90 percent coal/oil respectively, and then gradually progressing to 20 percent to 80 percent coal/oil, and then to maximum 30 percent to 70 percent coal/oil, if feasible; (2) emission testing shall take place after each increment and compliance with the particulate emission limitation (0.12 lbs/M Btu) and all other applicable regulations shall be demonstrated prior to any increase in coal/oil slurry ratio; (3) if nuisance conditions occur as a result of any coal han-

dling or burning operations, then the variance shall be subject to immediate termination; (4) the variances shall expire one year after NEPCo commences the burning of the coal/oil slurry and in no case shall terminate later than December 31, 1979.

Five comments were received during the 30-day comment period. Four comments supported the SIP revision and one was opposed. The comment opposing the revision was not specific and EPA's review has determined that appropriate measures are being taken to protect National Ambient Air Quality Standards (NAAQS), and that no NAAQS violations will result from this variance.

The Salem area was designated as "unclassified" for total suspended particulates (TSP) in the March 3, 1978 FEDERAL REGISTER (43 FR 8962). Although there were secondary violations monitored by private monitors in the area, the Massachusetts Department determined that emissions from Salem Harbor Station did not have an impact on such violations.

There have been no monitored violations of the NAAQS for sulfur dioxide (SO₂) in the Metropolitan Boston Interstate AQCR since regulation 310 CMR 7.05 (permitting burning of high sulfur fuel oil in certain facilities) has been in effect.

This SIP revision is not subject to the requirements for prevention of significant deterioration (PSD) in CFR 52.21. First, the source does not need a PSD permit because fuel changes are specifically excluded from the permit requirement. (40 CFR 52.21 (b)(2)(ii)(d)) and second, this SIP revision does not consume increment because the original SIP revision for sources in the Metropolitan Boston APCD, proposing an increase in allowable emissions from 1.0 percent S to 2.2 percent S fuel oil, the same limit as in this revision, was pending in the Regional Office on August 7, 1977 (40 FR 52.21(b)(11)(i)), and thus no increased emissions are being allowed.

The Agency finds that good cause exists for making this action effective immediately so that time constraints imposed by ERDA can be met.

After evaluation of the State's submittal, the Administrator has determined that this revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Massachusetts State Implementation Plan.

Authority: Section 110(a)(2)A-K and 301 of the Clean Air Act, as amended, (42 U.S.C. 7410 and 7601).

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. A new paragraph (17) is added in § 52.1120(c) to read as follows:

§ 52.1120 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(17) Revision to Regulations 310 CMR 7.05, Sulfur-in-Fuel, and 310 CMR 7.06, Visible Emissions, allowing burning of a coal-oil slurry at New England Power Company, Salem Harbor Station, Massachusetts, submitted on July 5, 1978 by the Commissioner, Massachusetts Department of Environmental Quality Engineering.

[FR Doc. 4231 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1036-41]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Mississippi: Revision of Mississippi Permit Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On January 31, 1978, the Mississippi Air and Water Pollution Control Commission adopted, after public notice and public hearing, revised permit regulations for the construction and/or approval of air emissions equipment, which were made necessary by changes in the State's pollution control law. This action, approving Mississippi's revision to their permit regulation, will have no adverse effect on the attainment and maintenance of the national ambient air quality standards.

The provisions of the revisions were described in a notice of proposed rulemaking in the FEDERAL REGISTER of August 30, 1978 (43 FR 38735). No comments were received. The purpose of this notice is to announce the Administrator's approval of these revisions.

EFFECTIVE DATE: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Archle Lee, Air Programs Branch, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, 404/881-2864.

SUPPLEMENTARY INFORMATION: The Mississippi Air and Water Pollution Control Commission on January 31, 1978, adopted revisions in its permit regulations (APC-S-2, Permit Regulations for the Construction and/or Operation of Air Emissions Equipment). The major provisions of the revisions, which were made necessary by changes in the State's pollution control law, are now described.

The permit issuing authority has been taken from the Commission and vested in the Mississippi Air and Water Pollution Control Permit Board. An applicant must apply for permit at least 180 days prior to the commencement of activity or in the case of renewal, 180 days before the expiration of the current permit. The original limit was 90 days. Included in the new regulations are requirements designed to insure compliance with both State and Federal regulations; the State would be able to require sources to comply with Federal regulations dealing with the prevention of significant deterioration of air quality, new source performance standards, and national emission standards for hazardous air pollutants. In addition, miscellaneous outdated material has been deleted from the regulations. The implementation of this revision in the Mississippi permit regulations will have no adverse effect on the attainment and maintenance of the national ambient air quality standards.

Accordingly, this revision is approved.

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart Z—Mississippi

In § 52.1270, paragraph (c) is amended by adding subparagraph (10) as follows:

§ 52.1270 Identification of plan.

(c) * * *

(10) Revised permit regulations, submitted on March 16, 1978, by the Mississippi Air and Water Pollution Control Commission.

[FR Doc. 79-4257 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL-10420-71]

PART 52—APPROVAL AND PROMULGATION OR IMPLEMENTATION PLANS

California Plan Revision: Public Availability of Emission Data

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to correct certain deficiencies in the California State Implementation Plan (SIP) concerning the public availability of emission data. EPA is promulgating, for 18 Air Pollution Control Districts (APCD's), the substitute Federal regulation which provides for correlation of emission data with applicable emission limitations.

EFFECTIVE DATE: March 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION: Under Section 110(a)(2)(F) of the Clean Air Act, as amended, and 40 CFR 51.10(e), SIP's must provide for the periodic reporting of emission data by source owners to the State or local agency which must be made available to the public and which must be correlated with applicable emission limitations.

On May 31, 1972 (37 FR 10842) EPA approved the California SIP, with specific exceptions, for the attainment and maintenance of the National Ambient Air Quality Standards. Included in this approval were provisions that emission data reported must be available to the public. Subsequently, the Agency reviewed these approvals and found that some plans contained confidentiality clauses which could have caused emission data to be withheld from the public. On November 28, 1975 (40 FR 5526) the Agency promulgated § 52.224 (a) and (b) to resolve this problem in California. Section 52.224(a)(1) lists those APCD's that meet all the requirements of 40 CFR 51.10(e). Section 52.224(a)(2) lists those APCD's which lack only the correlation of emission data requirement in § 51.10(e). Section 52.224(b)(1-4) is the substitute Federal regulation which provides for public availability of emission data.

Upon further review, EPA has determined that several APCD's included in

§ 52.224(a)(1) lack the provision for correlation of emission data with applicable emission limitations as required in § 51.10(e).

This rulemaking takes final action to revise 40 CFR 52.224(a) (1) and (2). Of the 21 APCD's previously approved under § 52.224(a)(1), 18 APCD's are deleted from that section. A list of the 18 APCD's affected by this action was published as part of the September 1, 1978 Notice of Proposed Rulemaking, (43 FR 39151). The 18 APCD's do not satisfy all the requirements of § 51.10(e) of this chapter since they lack a provision for correlation of emission data with applicable emission limitations. 40 CFR 52.224(b)(4) is promulgated for those 18 APCD's.

On September 1, 1978 (43 FR 39151) EPA proposed to correct these deficiencies. The Notice of Proposed Rulemaking provided for a 60 day comment period and offered to hold a public hearing upon request. No comments were received.

Under Section 110(c) of the Clean Air Act, as amended, the Administrator is required to promulgate regulations where a portion of the SIP is determined not to be in accordance with the requirements of Section 110.

It is the purpose of this notice to take final action to delete the 18 APCD's from 40 CFR 52.224(a)(1) and add them to 40 CFR 52.224(a)(2).

Authority: Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. sections 7410 and 7601(a)).

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

Subpart F of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.224(a) is amended as follows:

§ 52.224 General requirements.

(a) * * *

(1) * * *

- (i) Siskiyou County APCD.
- (ii) San Diego County APCD.
- (iii) Great Basin Unified APCD.

(2) * * *

- (i) Merced County APCD.
- (ii) Stanislaus County APCD.
- (iii) Fresno County APCD.
- (iv) Calaveras County APCD.
- (v) Tuolumne County APCD.
- (vi) San Joaquin County APCD.
- (vii) Mariposa County APCD.
- (viii) Tulare County APCD.
- (ix) Kern County APCD.
- (x) Madera County APCD.
- (xi) Yolo-Solano APCD.
- (xii) Sutter County APCD.

- (xiii) Glenn County APCD.
- (xiv) Tehama County APCD.
- (xv) Sierra County APCD.
- (xvi) Shasta County APCD.
- (xvii) Sacramento County APCD.
- (xviii) Del Norte County APCD.
- (xix) Humboldt County APCD.
- (xx) Lake County APCD.
- (xxi) Imperial County APCD.
- (xxii) Trinity County APCD.
- (xxiii) Ventura County APCD.
- (xxiv) Monterey Bay Unified APCD.
- (xxv) Northern Sonoma County APCD.
- (xxvi) San Luis Obispo County APCD.
- (xxvii) Kings County APCD.
- (xxviii) Plumas County APCD.
- (xxix) Nevada County APCD.
- (xxx) Mendocino County APCD.

[FR Doc. 79-4232 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1054-61]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

DELEGATION OF AUTHORITY TO STATE OF TEXAS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action amends Section 60.4, *Address*, to reflect the delegation of authority for the Standards of Performance for New Stationary Sources (NSPS) to the State of Texas.

EFFECTIVE DATE: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

James Veach, Enforcement Division, Region 6, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-2760.

SUPPLEMENTARY INFORMATION: A notice announcing the delegation of authority is published elsewhere in the Notice Section in this issue of the FEDERAL REGISTER. These amendments provide that all reports and communications previously submitted to the Administrator, will now be sent to the Texas Air Control Board, 8520 Shoal Creek Boulevard, Austin, Texas 78758, instead of EPA's Region 6.

As this action is not one of substantive content, but is only an administrative change, public participation was judged unnecessary.

(Sections 111 and 301(a) of the Clean Air Act; Section 4(a) of Public Law 91-604, 84

Stat. 1683; Section 2 of Public Law 90-148, 81 Stat. 504 [42 U.S.C. 7411 and 7601(a)]).

Dated: November 15, 1978.

ADLENE HARRISON,
Regional Administrator,
Region 6.

Part 60 of Chapter 1, Title 40, Code of Federal Regulations, is amended as follows:

1. In § 60.4, paragraph (b) (SS) is amended as follows:

§ 60.4 *Address*.

* * * * *

(b) * * *

(SS) State of Texas, Texas Air Control Board, 8520 Shoal Creek Boulevard, Austin, Texas 78758.

* * * * *

[FR Doc. 79-4223 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1054-7]

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of Texas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action amends Section 61.4, *Address*, to reflect the delegation of authority for the National Emission Standards for Hazardous Air Pollutants (NESHAPS) to the State of Texas.

EFFECTIVE DATE: February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

James Veach, Enforcement Division, Region 6, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-2760.

SUPPLEMENTARY INFORMATION: A notice announcing the delegation of authority is published elsewhere in the Notice Section in this issue of the FEDERAL REGISTER. These amendments provide that all reports and communications previously submitted to the Administrator, will now be sent to the Texas Air Control Board, 8520 Shoal Creek Boulevard, Austin, Texas, instead of EPA's Region 6.

As this action is not one of substantive content, but is only an administrative change, public participation was judged unnecessary.

(Sections 112 and 301(a) of the Clean Air Act; Section 4(a) of Public Law 91-604, 84

Stat. 1685; Section 2 of Public Law 90-148, 81 Stat. 504 [42 U.S.C. 7412 and 7601(a)].

Dated: November 15, 1978.

ADLENE HARRISON,
Regional Administrator,
Region 6.

Part 61 of Chapter 1, Title 40, Code of Federal Regulations, is amended as follows:

In § 61.04, paragraph (b) (SS) is amended as follows:

§ 61.04 Address.

(b) ***

(SS) State of Texas, Texas Air Control Board, 8520 Shoal Creek Boulevard, Austin, Texas 78758.

[FR Doc. 79-4228 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1039-51]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by Nebraska Department of Environmental Control to Nebraska Asphalt Paving Co., Valley, Nebr.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Nebraska Department of Environmental Control to the Nebraska Asphalt Paving Company. The Order requires the company to bring air emissions from its portable asphalt plant at Valley, Nebraska into compliance with certain regulations contained in the federally approved Nebraska State Implementation Plan (SIP). Because of the Administrator's approval, Nebraska Asphalt Paving Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on February 7, 1979.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in

response to a prior FEDERAL REGISTER notice proposing approval of the Order are available for public inspection and copying during normal business hours at the Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Missouri 64108.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Missouri 64108, telephone 816-374-2576.

SUPPLEMENTARY INFORMATION: On November 21, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43 FR 54273, a notice proposing approval of a delayed compliance order issued by the Nebraska Department of Environmental Control to the Nebraska Asphalt Paving Company. The notice asked for public comments by December 21, 1978, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Nebraska Asphalt Paving Company is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order placed Nebraska Asphalt Paving Company on a schedule to bring its portable asphalt plant at Valley, Nebraska into compliance as expeditiously as practicable with Nebraska Air Pollution Control Rules and Regulations, Rule 5, Particulate Emissions Limitations and Rule 13, Visible Emission, a part of the federally approved Nebraska State Implementation Plan. No interim requirements, including monitoring and reporting, pursuant to Section 113(d)(1)(c) shall be required during the period of this order as no such requirements were determined to be reasonable and practical for the reason that the plant operation is seasonal in nature and will be closed from November 1, 1978, until such time as the emission control equipment is installed and operational or May 15,

1979, whichever is earlier. If the conditions of the Order are met, it will permit Nebraska Asphalt Paving Company to delay compliance with the SIP regulations covered by the Order until June 15, 1979. The company is unable to immediately comply with these regulations.

Because the Order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect. Citizen suits under Section 304 of the Act are similarly precluded. If the Administrator determines that Nebraska Asphalt Paving Company is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Nebraska Asphalt Paving Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Nebraska State Implementation Plan.

(42 U.S.C. 7413(a), 7601)

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending § 65.321 to read as follows:

§ 65.321 Section 321 EPA Approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
Nebraska Asphalt Paving Company.	Valley, Nebraska	VII-78-DCO-15	Nebraska' Rules 5 and 13.	November 21, 1978.	June 15, 1979.

[FR Doc. 79-4238 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1043-31]

PART 65—DELAYED COMPLIANCE ORDERS**Delayed Compliance Order for Corning Glass Works**

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Corning Glass Works. The Order requires the Corning Glass Works to bring air emissions from two borosilicate glass melting furnaces at Greenville, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Corning Glass Works' compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act (the Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Cynthia Colantoni, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone: (312) 353-2082.

SUPPLEMENTARY INFORMATION: On November 21, 1978, the Regional Administrator of U.S. EPA's Region V Office published in the *FEDERAL REGISTER* (43 FR 54277) a notice setting out the provisions of a proposed State Delayed Compliance Order for Corning Glass Works. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Corning Glass Work by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). The Order places Corning Glass Works on a schedule to bring its two borosilicate glass melting furnaces at Greenville, Ohio, into compliance as expeditiously as practicable with Regulation OAC-3745-17-07(a)(1), a part of the federally approved Ohio State Implementation Plan. Corning Glass Works is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission

monitoring and reporting requirements. If the conditions of the Order are met, it will permit Corning Glass Works to delay compliance with the SIP regulation covered by the Order until July 1, 1979.

Compliance with the Order by Corning Glass Works will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the Regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Corning Glass Works is in violation of a requirement contained in the Order, one of more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rule-making constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective February 7, 1979, because of the need to immedi-

ately place Corning Glass Works on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

Inconsideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending Section 65.401 to read as follows:

§ 65.401 U.S. EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to each order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

Source	Location	Date of FR proposal	SIP regulation involved	Final compliance date
Corning Glass Works	Greenville, Ohio.	11-21-78	OAC 3745-17-07(a)(1).	7-1-79

[FRL Doc. 79-4237 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1050-41]

PART 65—DELAYED COMPLIANCE ORDERS**Delayed Compliance Order for Kaiser Aluminum and Chemical Corp.**

AGENCY: U.S. Environmental Protection.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to Kaiser Aluminum and Chemical Corporation (Kaiser Aluminum.) The Order requires Kaiser Aluminum to bring air emissions from its two coal-fired boilers at Heath, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Kaiser Aluminum's compliance with the Order will preclude suits under the Federal

enforcement and citizen suit provisions of the Clean Air Act (the Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On October 23, 1978, the Regional Administrator of U.S. EPA's Region V Office published in the *FEDERAL REGISTER* (43 FR 49329) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for Kaiser Aluminum. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public com-

ments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to Kaiser Aluminum by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places Kaiser Aluminum on a schedule to bring its two coal-fired boilers at Heath, Ohio, into compliance as expeditiously as practicable with Regulation AP-3-11, a part of the federally approved Ohio State Implementation Plan. Kaiser Aluminum is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Kaiser Aluminum to delay compliance with the SIP regulation covered by the Order until March 31, 1979.

Compliance with the Order by Kaiser Aluminum will preclude Federal enforcement action under Section 113 of the Act for Violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of

the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Kaiser Aluminum is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(a) of the Act. U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Kaiser Aluminum on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

On consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. By amending § 65.400 to read as follows:

Section 65.400 Federal Delayed Compliance Orders issued under section 113(d) (1), (3), and (4) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Kaiser Aluminum and Chemical Corporation.	Heath, Ohio.....	EPA-5-79-A-16.....	10-23-78.....	AP-3-11.....	3-31-79

[FR Doc. 79-4235 Filed 2-6-79; 8:45 am]

[6560-01-M]

[ERL 1045-1]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for American Chemical Services, Inc., Griffith, Ind.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to American Chemical Services, Inc. The Order requires the Company to bring air emissions from its waste gas incinerator at Griffith, Indiana, into compliance with certain regulations contained in the federally approved Indiana State Implementation Plan (SIP). American

Chemical Services, Inc.'s compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (the Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect February 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Cynthia Colantoni, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On December 13, 1978, the Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 58204) a notice setting out the provisions of a proposed State Delayed Compliance Order for American Chemical Services, Inc. The notice

asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to American Chemical Services, Inc. by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). The Order places American Chemical Services, Inc. on a schedule to bring its waste gas incinerator at Griffith, Indiana, into compliance as expeditiously as practicable with Regulation APC-15, a part of the federally approved Indiana State Implementation Plan. American Chemical Services, Inc. is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit American Chemical Services, Inc. to delay compliance with the SIP regulation covered by the Order until January 1, 1979.

Compliance with the Order by American Chemical Services, Inc. will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that American Chemical Services, Inc. is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place American Chemical Services, Inc. on a schedule for compliance with the Indiana State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: February 1, 1979.

BARBARA BLUM,
Acting Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending § 65.191 to read as follows:

Source	Location	Date of FR proposal	SIP regulation involved	Final compliance date
American Chemical Services, Inc.	Griffith, Indiana.	12/13/78	APC-15	1/1/79

[FRL 1045-1]

Air Pollution Control Board of the State of Indiana, Plaintiff; vs. American Chemical Services, Inc., Respondent. Cause No. A-108.

FINDINGS OF FACT

1. That the Air Pollution Control Board of the State of Indiana ("the Board") is an agency of the State of Indiana duly empowered pursuant to IC 13-1-1 and IC 13-7 to promulgate regulations related to the control of Air Pollution, to act upon complaints of alleged air pollution, and to enter such orders and determinations as may be necessary to prevent or abate air pollution.

2. That the Board has jurisdiction over both the subject matter and the parties to this action.

3. That pursuant to the provisions of IC 13-1-1 and IC 13-7-11-2, notice and service of same is waived by respondent.

4. That American Chemical Services, Inc., owns and operates a solvent processing and recovery facility located in Griffith, Indiana.

5. That as a part of its solvent process and recovery operations respondent operates a waste gas incinerator which emits hydrocarbons in violation of the standards set forth in Indiana Regulation APC-15.

6. That respondent is presently unable to comply with Indiana Regulation APC-15.

7. That monitoring of hydrocarbon emissions is not feasible.

RECOMMENDED ORDER

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable and that the terms of this Order comply with Section 113(d) of the Clean Air Act. Therefore, it is hereby ORDERED:

1. That respondent shall abate hydrocarbon emissions and achieve compliance with Indiana Regulation APC-15 by replacing the presently installed waste gas incinerator in accordance with the following schedule:

a. Submit information to the Board for a construction permit—complete.

b. Place purchase orders by November 13, 1978.

§ 65.191 U.S. EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to this Order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

c. Commence construction by December 11, 1978.

d. Complete construction by December 31, 1978.

e. Achieve final compliance and submit test results demonstrating final compliance with Indiana Regulation APC-15 by January 1, 1979.

2. That respondent shall continue to utilize the scrubbing system to unload bromine into the storage tank.

3. That in the interim the respondent shall modify the process for handling solvent and additives in order to control the destruction of product gas. This is the best practicable system of emissions reductions for the interim period.

4. That beginning the date this Order is signed respondent shall make monthly written progress reports to the Board delineating progress toward each incremental step or final compliance date specified in this Order.

5. That failure to meet the dates specified in this Order including interim dates constitutes a violation of this Order. Failure of the facilities subject to this Order to achieve final compliance with Indiana Regulation APC-15 by July 1, 1979, will subject respondent to a claim for a noncompliance penalty in accordance with Section 120 of the Clean Air Act (42 U.S.C. 7420) and any state regulation that may be submitted to and approved by the Administrator in accordance with that Section.

I have reviewed the above Findings of Fact and Recommended Order and hereby recommend that the Air Pollution Control Board adopt this as its Final Order.

Dated: August 31, 1978.

HARRY D. WILLIAMS,

Director,

Air Pollution Control Division.

I am duly authorized to legally bind American Chemical Services, Inc., in this matter and have reviewed the above Findings of Fact and Recommended Order and agree to be bound by said Order when issued by the Indiana Air Pollution Control Board.

Dated: August 28, 1978.

JOHN MURPHY, V.P.,
American Chemical Services, Inc.
[FR Doc. 79-4236 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL-959-2]

PART 85—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Subpart E—Regulations for Model Year 1979 and Later NOx Research Objective Programs Conducted by Automotive Manufacturers

AGENCY: Environmental Protection Agency.

ACTION: Final regulations (Interim) for Model Year 1979.

SUMMARY: This final rule establishes procedures which automobile manufacturers must follow in conducting research programs on oxides of nitrogen (NOx) in the Model Year 1979. Section 202(b)(7) of the Clean Air Act authorizes this action.

DATES: Submit request for public hearing: February 20, 1979. Submit written comments: April 9, 1979.

ADDRESS: Send comments to: Administrator, Environmental Protection Agency, Attention: Office of Mobile Source Air Pollution Control (ANR-455), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Robert Wagner, Office of Mobile Source Air Pollution Control, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313)668-4279

SUPPLEMENTARY INFORMATION:

On August 7, 1977, Congress amended the Clean Air Act¹ (the Act) to establish as a research objective, the development of " * * * propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light-duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen." EPA calculates that the emissions level necessary to meet this requirement is 0.41 gram per mile.

Section 202(b)(7) further requires EPA to publish regulations that direct manufacturers to build vehicles which

¹Pub. L. 95-95, 91 Stat. 685, 753, adding a new paragraph (7) to section 202(b).

meet this standard. In addition, the technology which the manufacturers develop must be fuelefficient and have the potential for mass production.

PUBLICATION OF THE FINAL RULE

We are issuing this rule in interim final from under the authority of 5 U.S.C. 553 which allows the promulgation of final rules without a prior Notice of Proposed Rulemaking (NPRM) under the following conditions:

When the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure are impracticable, unnecessary or contrary to the public interest.

What follows is an explanation of why we decided to dispense with the formal NPRM procedures.

Congress amended the Act on August 7, 1977. Since that time, we have devoted considerable effort to developing regulations to foster the research objectives of the Act. Congress intended manufacturers to implement the low NOx program in the 1979 model year, which is why it gave EPA such a short period to develop the regulations establishing the program. A period of public comment would delay issuance of a final rule to the point that manufacturers would not have adequate time to develop research programs before the 1980 model year. It would be contrary to the public interest, as well as the intent of Congress, to delay implementation of this program. Therefore we find "good cause" to dispense with the proposed rulemaking proceedings.

We have made every effort to involve interested parties in the development of this regulation. At the September 21, 1977 bi-monthly industry meeting, we announced that on the following day EPA staff would be available to discuss preliminary views on the development of regulations to establish manufacturers' NOx research programs under section 202(b)(7).

EPA staff and technical staff representing the industry attended this meeting. Discussion focused on the possibility of establishing a NOx research program in which EPA would select a low NOx test fleet from automobiles proposed by the manufacturers. This is a process analogous to the emission certification program. The fleet would have to include a sufficient number of vehicles to cover the range of a manufacturer's product line in terms of automobile size and engine type. Manufacturers would equip the fleet with optimum emission control systems and other components. It would include durability vehicles for testing conventional and alternate engines under development by the manu-

facturer. The durability vehicles would accumulate as much as 100,000 miles. The fleet would also include other vehicles for testing of components and for optimization of emission control systems.

Industry representatives objected strongly to this concept, observing that such a plan would divert resources from research designed to solve technical problems to the costly task of building test vehicle fleets.

The representatives also raised two other issues at this meeting. First, they claimed that by disallowing test vehicles, EPA would be usurping the manufacturers' decision-making authority on technical issues. Second, they claimed that the plan would impose a substantial paperwork burden both on EPA and on the industry.

Based on consideration of the issues raised at the September 22 meeting and additional internal-EPA analyses, EPA devised a substantially different approach to development of the regulations under section 202(b)(7). We prepared a paper outlining the revised concepts and sent it on December 22, 1977 to industry and public interest groups for review. We requested comments on this paper as soon as possible after that date.

Comments from the industry were generally favorable although they expressed the general concern that any regulations avoid excessive paperwork requirements and permit the industry wide latitude in decisionmaking. There was also some comment on the need for EPA to describe the method which we would use to evaluate a manufacturer's research effort. We discuss each of these issues in detail below. We received no comments from public interest groups.

We have developed the regulations published here on the basis of the December 22, 1977 concept paper. We are, nevertheless, interested in receiving comments comparing the original plan which we presented at the September 22 meeting with this one. Similar provisions are being proposed simultaneously in a Notice of Proposed Rulemaking applicable to 1980 and subsequent model years.

WHAT ROLE SHOULD EPA PLAY IN THE CONDUCT OF THE MANUFACTURER'S NOx RESEARCH PROGRAM?

Section 202(b)(7) requires that each manufacturer establish a NOx research program to build automobiles which meet the research goal we have set of 0.41 g/mi NOx. Section 202(b)(7) also requires the Administrator to develop regulations to ensure that affected manufacturers actually do establish NOx research programs. The Administrator is not to direct or manage the research program of an in-

dividual manufacturer. The full responsibility for conducting the research program, including responsibility for problems or failures, must lie with the manufacturer. Lack of full responsibility and accountability on the part of the manufacturer for its research effort may impede rather than foster the development of NOx control technology.

With this consideration in mind, one goal of these regulations is to provide each manufacturer full freedom to use his/her resources and technical expertise in developing and conducting a NOx research program in the manner it deems best, and to avoid injecting EPA into the research program in a manner that might shift responsibility for design or conduct of the program from the manufacturer to the Agency.

Once we identified what these regulations should not do, the issue became what role EPA should play in a manufacturer's NOx research program. We believe that Congress intends for EPA to monitor each manufacturer's NOx research activities and to report to Congress on the existence and adequacy of each program. There are no sanctions expressly associated with failure of a manufacturer to comply with section 202(b)(7) of the Act. The manufacturer's concern for his/her public image appears to be the major incentive for compliance.

WHAT ARE THE MAJOR PROVISIONS OF THESE REGULATIONS?

MANUFACTURER'S RESEARCH PROGRAM

Section 404 of the regulations describes the objectives which Congress established in the Act. First, manufacturers are to develop technology to achieve the NOx research goal of 0.41 g/mi. All automobiles built to meet this research goal must also satisfy all other applicable emission standards and requirements of the Clean Air Act. These regulations do not require the manufacturer to use any specific method to achieve these objectives. The responsibility for making technical judgments rests solely with the individual manufacturer.

ANNUAL RESEARCH PLAN AND REPORT

These regulations provide a way for EPA to monitor a manufacturer's NOx research program. Each manufacturer must provide EPA with a research plan at the beginning of the research period, and a report at the end.

Research plans must discuss the goals which a manufacturer establishes for himself/herself and describe the relationship of those goals to the objectives of the NOx research program which Congress established in the Act. The plan must discuss in detail specific activities for the annual research period. It must also include

schedules for the conduct of such projects and associated milestones.

At the end of each annual research period, manufacturers are required to submit a report to EPA. In this report, the year's research activities must be catalogued and evaluated by the manufacturers in terms of the progress (or lack of progress) made and how the results will be used in subsequent research or production activities. The regulations encourage manufacturers to combine annual reports and subsequent year's research plans to emphasize the continuity of the NOx research efforts and to minimize paper work.

In an effort to further minimize the burden on manufacturers, manufacturers are not required to submit every vehicle to EPA for testing; submission of the annual report will usually be sufficient. However, the Administrator may request vehicles for testing and the manufacturer should be prepared to comply with such a request.

BRIEFINGS FOR THE ADMINISTRATOR

These regulations provide that EPA may request briefings from manufacturers on the status of their NOx research activities. These briefings are intended to provide an opportunity for EPA and industry to exchange information relatively informally and without undue paperwork. EPA is not entitled to ask for more than one briefing per 3 months.

EPA REVIEW OF MANUFACTURER'S NOX RESEARCH PROGRAM

These regulations do not expressly establish a procedure for reviewing and reporting to Congress and the public on manufacturers' research programs, since this information can conveniently be included in either the Annual Report to Congress which is prepared by EPA under section 313, or the section 202(b)(4) reports. Should it appear desirable to do so, EPA may prepare written summaries and reviews of the manufacturers' NOx research programs separately.

Since research is necessarily a creative process, and in any field technical experts will often disagree in interpreting research results and, consequently, in deciding how to best proceed, we expect that in reviewing the materials submitted under these regulations, we may have reservations about the validity of some aspects of a manufacturer's program. However, in reviewing and reporting to Congress on manufacturer's programs, our emphasis will be on the apparent appropriateness of a manufacturer's program, i.e., were the resources allocated to a specific project reasonable in view of the complexity of the problem, were the data sufficient to support the

conclusions drawn or decisions made, and were the analytical methods used generally accepted procedures?

WHAT OTHER MAJOR ISSUES WERE IDENTIFIED IN DEVELOPING THESE RULES?

PAPER WORK REDUCTION

One of our major considerations in developing these regulations was to minimize the paperwork required in administering and complying with these rules. It is the Agency's view that both the research plan and the annual report required under this rule are necessary for EPA to effectively monitor the industry. To minimize the burden of preparing them, we allow the annual report and the subsequent research plan to be combined at the manufacturer's discretion. Manufacturers will be permitted to reference applicable portions of other materials provided to EPA in their annual reports. We specifically invite comment on any additional ideas for reducing reporting or record keeping requirements.

DEMONSTRATION VEHICLES

The Act requires an annual demonstration of the operation of vehicles that achieve the NOx research objective. An important issue in the development of this rule was that of how the number and types of demonstration vehicle(s) would be determined. We decided that the manufacturers should be responsible for identifying the number and types of vehicles. The manufacturers are required to conduct fuel economy and emissions testing as a minimum, but the manufacturer is responsible for determining the mileage points at which this testing should be performed.

AFFECTED MANUFACTURERS

Section 202(b)(7) of the Act specified that these regulations apply to each manufacturer whose sales represent at least 0.5 per centum of light-duty motor vehicle sales in the United States. Based on vehicle registration or sales data, the following manufacturers are affected for the 1979 research period: American Motors, British Leyland, Chrysler, Fiat, Fuji, Mitsubishi, Ford, General Motors, Honda, Nissan, Toyota, and Volkswagen. This publication constitutes notice of the determination of affected manufacturers for purposes of section 403(c).

For 1980 and subsequent model years, the determination of affected manufacturers will be based on the production data submitted by the manufacturers under 40 CFR 600.512 in a report called the "model year report" covering the second model year prior to the annual research period.

The model year report required to be submitted under 40 CFR 600.512 is required for the purpose of calculating a manufacturer's fleet average fuel economy which the Secretary of Transportation uses in enforcing the fuel economy standards of the Motor Vehicle Information and Cost Savings Act.

COMMENTS AND THE PUBLIC DOCKET

Copies of materials relevant to this rule are contained in Public Docket No. OMSAPC-78-2 located in the U.S. Environmental Protection Agency, Central Docket Section, Room 2903B (EPA library), 401 M Street, SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

Interested parties may participate in this interim-final rulemaking by submitting comments (in quadruplicate if possible) to the Administrator, Environmental Protection Agency, Attention: Office of Mobile Source Air Pollution Control (AW-455), 401 M Street, SW., Washington, D.C. 20460 no later than April 9, 1979. As noted above, these provisions are being simultaneously proposed in a Notice of Proposed Rulemaking applicable to 1980 and later model years elsewhere in this issue of the FEDERAL REGISTER. All relevant material received during that comment period will also be considered.

EPA's intention is to assure interested parties an opportunity to study all information which may become the basis for EPA's final action in this proceeding. Accordingly, the Agency will not consider in this rulemaking any materials for which trade secrecy is claimed. Parties who wish to submit information in response to this notice are cautioned that EPA will return any comments which are claimed, in whole or in part, to be confidential.

ECONOMIC IMPACT ASSESSMENT

In accordance with section 317(c) and (d) of the Act, the EPA has considered the economic impacts of this action and determined that the effects of this rule on inflation, competition, consumer costs, and energy use are negligible. The cost to the industry in complying with these provisions is also expected to be minimal. Costs to the industry will be incurred in the process of providing information to the Administrator on their NOx research programs in the form of reports and in building and testing demonstration vehicles. However, some portion of that cost would be incurred even without these rules, since it is expected that they currently have NOx research programs. The cost of building and testing a demonstration vehicle for research purposes will vary depending on the extent of testing and the com-

plexity and availability of hardware and vehicle components. Durability testing programs administered by the EPA have averaged \$125,000 per test vehicle. These regulations provide the manufacturer the discretion to determine the appropriate number of test vehicles. The total cost to the industry of this rulemaking action is estimated to be of the order of \$6,000,000.

NOTE.—Accordingly, the EPA has determined that this document is not a "significant" regulation and does not require preparation of a Regulatory Analysis under Executive Order 12044.

Dated: January 29, 1979.

BARBARA BLUM,
Acting Administrator.

A new Subpart E is added to 40 CFR Part 85 and reads as follows:

Subpart E—Oxides of Nitrogen Research Program for Model Year 1979

- Sec.
85.401 Scope.
85.402 Definitions.
85.403 Manufacturer participation.
85.404 Manufacturer's research program.
85.405 Plan for the research period.
85.406 Conduct of the research program.
85.407 Annual report.
85.408 Maintenance of records; submittal of information; right of entry. [Reserved]
85.409 Treatment of confidential information.

AUTHORITY: Sec. 202, 208 and 301(a), Clean Air Act, as amended (42 U.S.C. 7526, 7542 and 7601(a)).

Subpart E—Oxides of Nitrogen Research Program for Model Year 1979

§ 85.401 Scope.

The provisions of this subpart establish an oxides of nitrogen research program and require the participation of certain light-duty vehicle manufacturers.

§ 85.402 Definitions.

The terms used in this subpart shall have the meaning established in the Clean Air Act and 40 CFR Part 86. The following definition shall also apply:

"Annual research period" means the time period from 1 August of a given calendar year to 31 July of the next calendar year, e.g., the 1979 annual research period would be the time period from 1 August 1978 to 31 July 1979.

§ 85.403 Manufacturers' participation.

(a) Each manufacturer whose sales are determined by the Administrator to represent at least 0.5 per centum of light-duty motor vehicle sales in the United States is required to comply with the provisions of this subpart beginning in the 1979 annual research period.

(b)(1) For 1980 and subsequent annual research periods, the Administrator will base his/her determinations under paragraph (a) of this section on production data contained in the model year reports submitted by manufacturers to the Administrator pursuant to 40 CFR 600.512 (for use in calculating a manufacturer's corporate average fuel economy) for the model year two years prior to the year of the annual research period.

(2) For the 1979 annual research period, the Administrator has based his determination under paragraph (a) of this section on available registration and/or sales data.

(c)(1) The Administrator will provide notice to manufacturers that their compliance with the provisions of this subpart is required beginning in a given annual research period. Such notice shall be deemed to constitute notice for subsequent annual research periods as well, unless rescinded by the Administrator.

(2) A manufacturer may, at any time, request in writing that a new determination be made under paragraph (b) of this section for a given annual research period, stating the basis for such new determination. The Administrator will respond in writing to such requests and issue a new determination in accordance with paragraph (b) of this section.

(d) A manufacturer who is not required to comply with the provisions of this subpart may comply on a voluntary basis.

§ 85.404 Manufacturers' research program.

(a) Each manufacturer who is subject to these regulations shall institute a research program to work towards the following objectives:

(1) The development of propulsion systems and emission control technology to achieve the research goal of 0.41 gram per mile oxides of nitrogen.

(2) The construction and demonstration, for each annual research period, of the operation of light-duty motor vehicles that meet the research objective of paragraph (a)(1) of this section and meets all other applicable emission standards or requirements under the Clean Air Act. The most stringent hydrocarbon, carbon monoxide, evaporative emissions and other emissions standards and/or requirements established by regulation or statute prior to the start of an annual research period for a future model year shall apply.

(3) The demonstration vehicles under paragraph (a)(2) of this section shall:

(i) Be designed to encourage the development of new powerplants and emission control technologies that are fuel efficient;

(ii) Be within or be reasonably expected to be within the productive capability of the manufacturers; and

(iii) Use optimum engine, fuel, and emission control system.

(b) Each manufacturer's overall oxides of nitrogen research program shall be designed to meet the objectives of paragraph (a) of this section in accordance with good research and engineering practice.

§ 85.405 Annual research period plan.

(a) Not later than March 15, 1979, and September 1 each annual research period thereafter, the manufacturer shall provide the Administrator three (3) copies of an annual research program plan that contains the information specified in paragraphs (b) and (c) of this section. Two (2) copies shall be sent to:

U.S. Environmental Protection Agency, Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

One (1) copy, less any material claimed to be confidential shall be sent to:

U.S. Environmental Protection Agency, Office of Mobile Source Air Pollution Control (AW-455), Freedom of Information Office, 401 M Street, SW., Washington, D.C. 20460.

(b) Each plan shall contain a description and discussion of:

(1) The manufacturer's long term, interim, and short term NOx research and development goals. Long term goals are more than 4 years beyond the end of the annual research period. Interim goals are those applicable between 0 and 4 years beyond the end of the annual research period, and short term goals are those applicable to the annual research period for which the plan applies;

(2) The specific problems that exist, or are expected to exist, in the development and demonstration of vehicles that achieve the objectives of § 85.404;

(3) The relationship of the goals in paragraph (b)(1) of this section to the problems identified in paragraph (b)(2) of this section and to the objectives of section 404 of this subpart; and

(4) The resources, in terms of personnel, capital expenditures, materials, and contracted efforts the manufacturers intend to allocate to the research program. Planned resource expenditures shall be estimated for the current and each future annual research period contained in the plan. Key scientific and engineering personnel shall be identified by name, title, and corporate organizational unit for each major project identified by the manufacturer in response to paragraph (d)(1) of this section.

(c) Each plan shall contain a brief discussion of how the research program established to comply with this subpart interfaces with other programs conducted by the manufacturer, including contracts with the Federal Government. There should be a general discussion of such programs which includes but is not limited to:

(1) The manufacturer's overall low emissions research and development program, including but not limited to programs for meeting state requirements, unregulated emissions, emissions at high altitude, evaporative emissions, and particulate emissions;

(2) Fuel economy improvement programs;

(3) Vehicle driveability and performance programs; and

(4) Alternate engine programs.

(d)(1) The plan shall identify and fully describe each project and the purposes of each project the manufacturer plans to conduct or sponsor including but not limited to research efforts in:

(i) Catalyst development and evaluation programs;

(ii) Fuel metering development and evaluation programs;

(iii) EGR development and evaluation programs;

(iv) Air injection development and evaluation programs;

(v) Development and evaluation programs for heat conservation;

(vi) Ignition system development and evaluation programs;

(vii) Development and evaluation programs for combustion or combustion chamber modifications;

(viii) Electronic control system/component development and evaluation programs;

(ix) New powerplant programs, such as those related to stratified charge engines, Diesel engines, gas turbine engines, and Stirling engines;

(2) The plan shall provide the following additional information about projects planned to be conducted during the research period to which the plan applies:

(i) A schedule for the initiation and completion of major outputs;

(ii) Detailed discussion of anticipated technical problems; and

(iii) For demonstration vehicles: a description of each vehicle, the number and type(s) of tests to be performed and a description of the engine, fuel system components and emission control system to be used on each vehicle.

§ 85.406 Conduct of the research program.

(a) Nothing in this subpart shall be construed as limiting the scope, or direction of a manufacturer's plan, the manufacturer's decision-making ability, or the manufacturer's responsibility to conduct the research plan.

(b) All programs outlined in the annual research plans required by § 85.405 or necessary modifications to those plans must be conducted in a manner consistent with good engineering and research practice.

(c) Manufacturers shall build and test vehicles that employ technology which is consistent with the objectives of section 404 of this subpart. Testing shall include but is not limited to regulated emissions and fuel economy.

(d) Upon reasonable notice from EPA, manufacturers shall provide periodic briefings and/or reports for the Administrator regarding the status of the activities being conducted during the research period. Such briefings and/or reports will be requested not more frequently than quarterly, and will be limited to vehicle emission and fuel economy data, discussion and interpretation of that data, important events during the reporting period, significant program changes, and other indications of status, progress, or lack of progress in meeting the objectives of the research and development effort.

(e) For purposes of testing, the Administrator may request and the manufacturer shall provide, demonstration vehicles constructed under paragraph (c) of this section.

(f) The manufacturer shall notify the Administrator of any major changes to the plan including, but not limited to, the decision to discontinue mileage accumulation on a vehicle prior to the accumulation of all planned mileage, and/or to destroy a vehicle or prototype test hardware. The manufacturer shall provide an opportunity for the Administrator to test or inspect such vehicles and/or hardware prior to discontinuation or destruction.

§ 85.407 Annual report.

(a) Each manufacturer shall provide three(3) copies of an annual report that contains the information required by paragraph (b) of this subpart no later than 60 days after the end of the research period to which the report applied. The annual report may be combined with the annual research plan required by section 405 for the following annual research period.

(b) The annual report shall include the following:

(1) A summary of the work conducted, conclusions about the success or failure of each project, a discussion of the implications for future efforts of the research and development activities conducted, a comparison of actual accomplishments to those planned, and identification and discussion of significant problem areas;

(2) A list of the projects conducted, a discussion of the relationship of the projects to the goals of the plan sub-

mitted pursuant to § 85.405, a discussion of the influence that research and development efforts in programs identified under section 405(b)(3) of this subpart had on the efforts conducted under this subpart.

(3) A description of how the original plan was modified during the annual research period and the basis and rationale for such modification;

(4) A description of each demonstration vehicle constructed under section 406 of this subpart, including a description of each engine, emission control system, and fuel system component used, all test data generated during the annual research period on the demonstration vehicles including but not limited to testing for regulated and unregulated emissions, fuel economy, driveability, and performance.

(5) An identification of any vehicle(s) which the manufacturer considers to represent the best relationship among emissions, fuel economy, driveability, performance, cost, reliability, maintainability, producibility and other factors of importance to the manufacturer;

(6) A description of other programs, including those conducted with outside organizations, that generated test data that involve emissions, including but not limited to: Engine dynamometer testing, optimization programs, catalyst screening testing, and component testing. Representative data and conclusions from these programs shall be submitted, and impacts of these programs on future vehicle testing shall be discussed;

(7) Projections of the fuel economy implications of the use of the types of technology used during the annual research period, specifically including an estimate of the fleet average fuel economy of a fleet of vehicles that could be manufactured four (4) years in the future. The hypothetical fleet shall be described in terms of the sales mix, inertia weight, engine, transmission, axle ratio, and the emission control system assumed for each type of vehicle;

(8) An identification of the resources expended during the research period and a comparison of those expenditures to those in the plan submitted under section 405.

§ 85.408 Maintenance of records; submission of information; right of entry. [Reserved.]

§ 85.409 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR, Part 2, Subpart B.

(b) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must submit such information on separate pages which are clearly marked "TRADE SECRET" and which are easily detached from the document, and provide a separate section labeled "CONFIDENTIAL BUSINESS INFORMATION" in which the number of each page on which confidential information appears shall be identified.

(c) If a claim is made that some or all of the information is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(d) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice.

AUTHORITY: Sections 202, 206, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7542 and 7601)]

[FR Doc. 79-4226 Filed 2-6-79; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Ch. IX]

[Docket No. AO 384]

GRAPEFRUIT GROWN IN ARIZONA

Hearing on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider a proposed marketing agreement and order regulating the handling of grapefruit grown in Arizona. The principal provisions to be considered are: (1) establishment of an administrative committee of five Arizona grapefruit producers and one public member to assist the Secretary of Agriculture in administering the proposed marketing agreement and order program; (2) authorization for grade, size, and quality regulations; (3) authorization for production research and marketing research and development projects, including advertising; and (4) provisions relative to definitions, expenses and assessments, inspection and certification, reporting requirements, and certain miscellaneous provisions included in all marketing agreement and order programs.

DATE: The hearing will begin March 12, 1979.

ADDRESS: The hearing will be held in the Maricopa County Agriculture Agent's Office, 4341 East Broadway, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at Phoenix, Arizona, on March 12, 1979, at 9:30 a.m., local time in the Maricopa County Agriculture Agent's Office, Phoenix, Arizona, with respect to a proposed marketing agreement and order regulating the handling of grapefruit grown in Arizona. The proposed marketing agreement and order have not received

the approval of the Secretary of Agriculture.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

At the present time, marketing order No. 909 (7 CFR Part 909) regulates grapefruit grown in Arizona and in a designated area in California. In recent years, the views of California growers and Arizona growers have differed relative to marketing activity, grade and size regulations, and other matters under the present order. Thus, the two groups concluded that separate marketing orders for the designated area of California and for Arizona would be desirable. This document gives notice of a public hearing to consider a proposed marketing agreement and order for grapefruit, grown in Arizona. An action to conduct a public hearing to consider a proposed marketing order for grapefruit grown in a designated area in California also has been initiated by the Department.

The public hearing is for the purpose of:

(a) Receiving evidence with respect to the economic and marketing conditions which relate to the proposed marketing agreement and order hereinafter set forth, and any appropriate modifications thereof;

(b) Determining whether the handling of grapefruit grown in the area proposed for regulation is in the current of interstate commerce or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement or order regulating the handling of such grapefruit in the area; and

(d) Determining whether provisions specified in the proposals or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the Act.

The request for the hearing was submitted by a committee comprised of the Arizona members of the Administrative Committee, the agency established under Marketing Order No. 909 (7 CFR Part 909) which currently reg-

ulates the handling of grapefruit grown in Arizona and a designated part of California. The provisions of the proposed marketing agreement and order are as follows (the sections identified with asterisks (**) apply only to the proposed marketing agreement and not to the proposed marketing order):

DEFINITIONS

§ —.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ —.2 Act.

"Act" means Pub. L. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ —.3 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ —.4 Grapefruit.

"Grapefruit" means all varieties of Citrus paradisi, MacFadyen, grown in the production area.

§ —.5 Production area.

"Production area" means the State of Arizona.

§ —.6 District.

The production area shall be divided into districts as follows:

(a) "Yuma District" means that part of the State of Arizona situated within Yuma County.

(b) "Phoenix District" means that part of the State of Arizona outside of Yuma County.

§ —.7 Producer.

"Producer" is synonymous with grower and means any person engaged in a proprietary capacity in the commercial production of grapefruit.

§ —.8 Handler.

"Handler" (except a common or contract carrier of grapefruit by another person) who handles grapefruit in fresh form.

§—9 Handle.

"Handle" means to sell, ship, consign, deliver or transport grapefruit or cause grapefruit to be sold, shipped, consigned, delivered or transported between the production area and any point outside thereof, or within the production area: *Provided*, That, the term handle shall not include (a) the transporting of grapefruit by common carrier when such grapefruit is owned by another person; (b) the sale of grapefruit on tree; (c) the transporting of grapefruit from the point of production to a packinghouse within the production area for preparation of fresh market; or (d) the transporting of grapefruit from the point of production to a packinghouse outside the production area for preparation for fresh market under a special handling permit issued pursuant to §—45.

§—10 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on September 1 of one year and ending on the last day of August of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§—11 Variety.

"Variety" means either or both of the following classifications of grapefruit: (a) White seeded and white seedless grapefruit; and (b) pink or red seeded grapefruit and pink or red seedless grapefruit.

§—12 Committee.

"Committee" means the Arizona Grapefruit Administrative Committee established under §—20.

ADMINISTRATIVE BODY

§—20 Establishment and membership.

There is hereby established an Arizona Grapefruit Administrative Committee consisting of five producer members, each of whom shall have an alternate. The committee may be increased by one public member and alternate, nominated by the committee and selected by the Secretary. Two producer members shall be producers of grapefruit in the Yuma District and two shall be producers of grapefruit in the Phoenix District. The fifth producer member shall represent that district which produced more than 50 percent of the total production of grapefruit during the fiscal period which immediately preceded the year in which nominations are made. In the event production in such district during such fiscal period is less than the preceding fiscal period by 25% or more, the average production of the three fiscal periods preceding the one in which nominations are made shall

be used in determining apportionment of producer members between districts. Such apportionment shall be made prior to the time nominations are made as specified in §—22. To the extent practicable, at least one producer member in each district shall be affiliated with a cooperative marketing organization and at least one shall be not so affiliated; and not more than one producer member and alternate shall be affiliated with the same packinghouse.

§—21 Term of office.

The term of office of the members and alternate members shall be two fiscal periods: *Provided*, That, the term of office of initial members and alternates shall begin as soon as practicable subsequent to the effective date of this part and end August 31, 1981. Each member and alternate shall serve during the term of office for which that person is selected and has qualified and shall continue to serve until a successor is selected and has qualified.

§—22 Nomination.

(a) *Initial producer members*. The Secretary shall hold, or cause to be held, meetings of producers to nominate the initial producer members and alternate members of the committee. Such meetings shall be held as soon as practicable after the effective date of this part.

(b) *Successor producer members*.

(1) Nominations for producer members of the committee, and their respective alternates, shall be made at meetings of producers held by the committee at such times and places as it shall designate. The names of nominees shall be submitted to the Secretary prior to July 1 of the year in which nominations are made. The committee shall prescribe appropriate procedures for the conduct of and voting at such meetings.

(2) Only producers, including duly authorized officers or employees of producers, who are present shall participate in the nomination of producer members and alternate members. Each producer shall be entitled to cast only one vote for each nominee to be selected in the district in which he produces grapefruit. No producer shall participate in the selection of nominees in more than one district. Any producer who produces grapefruit in more than one district shall select the district in which he will so participate.

(3) Except as hereinafter provided, only producers affiliated with cooperative marketing organizations may vote for nominees affiliated with such organizations; and only producers not affiliated with cooperative marketing organizations may vote for nominees not so affiliated. In the event some of a

producer's grapefruit is handled through a cooperative marketing organization and some is handled through an organization that is not a cooperative marketing organization such producer shall be eligible to participate in only the category (i.e., as affiliated with or not affiliated with a cooperative marketing organization) in which such producer's major volume of grapefruit is handled. At least one nominee shall be nominated for each member and alternate member position to be filled.

(c) *Public member*. Nominations for the initial public member and alternate and successor public members and alternates shall be made by the committee.

(d) *Failure to nominate*. In the event nominations are not made as specified in §.22 the Secretary may select members and alternate members, without regard to nominations, from any eligible individuals.

§—23 Selection.

The Secretary shall select members and alternates of the committee from persons nominated pursuant to §.22 or from other persons eligible for nomination for such positions.

§—24 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§—25 Alternate members.

An alternate member shall act in the place of the member during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for that member until a successor for such member is selected and has qualified. In the event that neither the member or that member's alternate are able to attend a committee meeting, the members present may designate any other alternate to serve in such member's place at that meeting.

§—26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §.22. If nomination to fill any such vacancy is not made within 30 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

§ —.27 Powers.

The committee shall have the following powers:

- (a) To administer this part in accordance with its terms and provisions;
- (b) To make and adopt rules and regulations to effectuate the terms and provisions of this part;
- (c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and
- (d) To recommend to the Secretary amendments to this part.

§ —.28 Duties.

It shall be the duty of the committee:

- (a) To select a chairman from its membership, and to select such other officers and adopt such rules and regulations for the conduct of its business as it may deem advisable;
- (b) To keep minutes, books, and records which will clearly reflect all of its acts and transactions, which minutes, books, and records shall at all times be subject to the examination of the Secretary; and to mail a copy of the minutes to the Secretary promptly following each committee meeting, and to any other interested person who has filed his name and address with the committee for such purposes.
- (c) To act as intermediary between the Secretary and the producers and handlers;
- (d) To furnish the Secretary with such available information as he may request;
- (e) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;
- (f) To cause its books to be audited by a competent public accountant at least once for each fiscal period, and at such other times as it deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;
- (g) To prepare a monthly statement of financial operations of the committee and to make such reports, together with the minutes of the meetings of the committee, available for inspection by any producer or handler at the office of the committee;
- (h) To determine as near as practicable the total crop of grapefruit, and to make such determinations, including determinations by grade and size as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;
- (i) To investigate the growing, handling, and marketing conditions with respect to grapefruit and to assemble data in connection therewith;
- (j) To prepare and mail, as soon as practicable after the close of each fiscal period, to the Secretary, and to each handler and grower who so re-

quests, an annual report covering the operation of the previous fiscal period;

(k) With the approval of the Secretary, to redefine the districts into which the production area is divided; to increase or decrease the membership of the committee; to reapportion the representation of any district on the committee; or to reapportion representation on the basis of affiliation. Any such changes shall reflect, insofar as practicable, shifts in grapefruit production within the districts and the production area;

(l) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies in connection with all proper committee activities and objectives under this part; and

(m) To establish, with the approval of the Secretary, procedures for the nomination of and qualification for a public member and alternate.

§ —.29 Compensation and expenses.

The members of the committee, and alternates when acting as members, shall serve without compensation; but they shall be reimbursed for reasonable expenses, as approved by the committee, incurred by them in the performance of their duties under this part. Alternate members shall be reimbursed for expenses necessarily incurred by them in attending committee meetings at the request of the committee, notwithstanding that the committee member for whom they serve as alternate also attends such meeting, and for performing other committee business at the request of the committee.

§ —.30 Procedure.

(a) A majority of the number of members constituting the committee, including alternates acting for members, shall be necessary to constitute a quorum and concurrence by at least such majority shall be necessary to pass any motion. At assembled meetings, each vote must be cast in person.

(b) The committee shall give to the secretary, and to any other interested persons who have filed their names and addresses with the committee requesting such notice, the same notice of meetings of the committee as is given to the members of the committee.

(c) Except at an assembled meeting, the committee may vote by telephone, telegraph, or other means, and any such vote so cast shall be confirmed promptly in writing.

EXPENSES AND ASSESSMENTS

§ —.34 Expenses.

The committee is authorized to incur such expenses, including inspection expenses, as the Secretary finds

are reasonable and likely to be incurred to carry out the functions of the committee during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers, as provided in § —.35.

§ —.35 Assessments.

(a) Each handler who first handles grapefruit shall, with respect to the grapefruit so handled, pay to the committee, upon demand, such handler's pro rata share of expenses which the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning during each fiscal period. Such handler's pro rata share of such expenses shall be equal to the ratio between the total quantity of grapefruit handler by that handler as the first handler thereof, during the applicable fiscal period, and the total quantity of grapefruit so handled by all handlers during the same fiscal period.

(b) The Secretary shall fix the rate(s) of assessment to be paid by handlers and such rate(s) may be fixed by variety. At any time during or after a fiscal period, the Secretary may increase the rate(s) of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Such increased rate(s) shall be applicable to all grapefruit handler during that fiscal period and may be fixed on the basis of the variety of grapefruit, as appropriate. To provide funds for the administration of this part, the committee may accept the payment of assessments in advance, or may borrow money for such purpose.

(c) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(d) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary.

(e) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of expenses.

§ —.36 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall

be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the handlers from whom it was collected: *Provided*, That any sum paid by a handler in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such handler.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That, such reserve shall not exceed an amount approximating one full fiscal period's expenses, exclusive of inspection costs. Any such reserve may be maintained by varietal type. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; or (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the handlers from whom such funds were collected.

(b) All funds received by the committee shall be used solely for purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH AND DEVELOPMENT

§—37 Production research, market research, and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to

assist, improve or promote the marketing, distribution, consumption or efficient production of any variety or varieties of grapefruit. The expense of such activities shall be paid from funds collected under §—35. Such projects may provide for any form of marketing promotion, including paid advertising. Any such project for promotion and advertising may utilize an identifying mark or term which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe.

REGULATION

§—38 Marketing policy.

Prior to submitting recommendations under §—39, the committee shall submit to the Secretary a report setting forth the marketing policy. It deems advisable for the ensuing fiscal period. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the demand and supply situation with respect to grapefruit. The committee shall publicly announce the submission of each marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or handler. In determining each such marketing policy the committee shall give due consideration to the following:

- (a) Market prices by grade and size of each variety of grapefruit;
- (b) Supply of grapefruit by grade and size of each variety of grapefruit;
- (c) Supply of competing fruits;
- (d) Expected demand conditions for grapefruit in different market outlets;
- (e) Type of regulation expected to be recommended during the fiscal period;
- (f) Trend and level of consumer income;
- (g) Marketing conditions affecting grapefruits prices; and
- (h) Other relevant factors.

§—39 Recommendations for grade and size regulation.

Whenever the committee finds it advisable to regulate the handling of particular grades or sizes of any variety of grapefruit during any period, it shall recommend such regulation for that period. Recommendations may include different size limitations for any variety handled to any of the marketing zones established pursuant to §—43.

§—41 Issuance of regulations.

(a) Whenever the Secretary finds from the recommendation and information submitted by the committee or from other available information, that

limiting the handling of any variety of grapefruit to particular grades or sizes, or both, would tend to effectuate the declared policy of the act, he shall so limit the handling of that variety for a specified period; and the limitation may prescribe different size requirements for the handling of such variety by the initial handler thereof directly to the marketing zones specified. The committee shall be informed immediately of any such regulation issued by the Secretary; and the committee shall promptly give adequate notice thereof to handlers.

(b) Whenever the Secretary finds from the recommendation and information submitted by the committee, or from other available information, that to establish and maintain in effect minimum standards of quality or maturity, or both, for the handling of grapefruit during any period would tend to effectuate the declared policy of the act and be in the public interest, he shall establish such standards, designate such period, and so limit the handling of such grapefruit. The Secretary shall immediately notify the committee of the issuance of any such regulations; and the committee shall promptly give adequate notice thereof to handlers.

§—42 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued under §—41 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendation and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of grapefruit in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§—43 Marketing zones.

The committee, with the approval of the Secretary, may prescribe different size requirements for any variety of grapefruit handled for shipment to the following marketing zones:

- (a) Zone 1: The States of Arizona and California.
- (b) Zone 2: The State of Florida.
- (c) Zone 3: The State of Texas.
- (d) Zone 4: The States of Washington, Oregon, Montana, Idaho, Wyoming, Nevada, and Utah.

(e) Zone 5: The States not included in Zones 1, 2, 3, 4, and 6.

(f) Zone 6: The States of Hawaii and Alaska and all export markets.

§ —.44 Grapefruit not subject to regulation.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ —.35, —.41 and —.42 and the regulations issued thereunder, ship grapefruit of any variety as follows: (1) to a charitable institution for consumption at such institution; (2) to a relief agency for disposition by such agency; (3) for conversion within the continental United States by a commercial processor into any processed or manufactured product, including canned or bottled grapefruit or grapefruit juice, frozen products or beverage base; (4) directly to destinations in Mexico; or (5) by express, parcel post or common or contract carrier in units of five cartons or less.

(b) Upon the basis of recommendation and information submitted by the committee, or from other available information, the Secretary may relieve in whole or in part from any or all of the requirements under this part, the handling of grapefruit in such minimum quantities, in such types of shipments, in such types of outlets, or for such specific purposes as the committee may recommend.

(c) The committee shall, with the approval of the Secretary, prescribe rules, regulations, and safeguards necessary to assure compliance with this section. Such rules, regulations, and safeguards may include requirements that handlers shall file applications and receive approval from the committee for authorization to handle grapefruit under this section, and that such application be accompanied by certification by the intended purchaser or receiver that the grapefruit will not be used for any purpose not authorized by this section.

§ —.45 Special handling permit.

The committee may issue special handling permits authorizing the transportation of grapefruit in bulk lots which do not meet the applicable grade and size regulations to packing facilities outside the production area for preparation for fresh market. All such lots shall be handled in accordance with the rules and regulations prescribed by the committee with the approval of the Secretary, and shall be subject to assessment, and the inspection and certification requirements prescribed by §§ —.35, —.41, and —.42. Any special handling permit may be revoked by the committee if the holder of such permit fails to comply with the applicable rules and regulations.

INSPECTION AND CERTIFICATION

§ —.46 Inspection and certification.

(a) During any period in which the Secretary has regulated the handling of any variety or varieties of grapefruit pursuant to § —.41, or § —.42, each handler shall, prior to the handling of any lot of such variety or varieties, cause such lot to be inspected by an authorized representative of the Federal or Federal-State Inspection Service. Promptly thereafter, such handler shall submit to the committee a copy of the inspection certificate issued thereon. The provisions of this section shall not be applicable to any lot which has been so inspected and a copy of such inspection certificate has been submitted to the committee.

(b) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

REPORTS

§ —.47 Reports.

(a) *General.* For the purpose of enabling the committee to perform its functions and duties under this part, each handler shall furnish to the committee such information in such form and at such times and substantiated in such manner as shall be prescribed by the committee and approved by the Secretary.

(b) *Shipping manifest report.* The committee may require information from each handler regarding the grade, size, and variety of each carton contained in each individual shipment made by such handler, and may require such information to be delivered to the committee within twenty-four hours after such shipment is made, in such manner as the said committee may request and upon forms prepared by it.

(c) *Disposition report.* The committee may, from time to time, require each handler to furnish the following information with respect to grapefruit: the quantity of each variety handled in interstate commerce and to Canada; the quantity of each variety handled by express and parcel post; the quantity of each variety handled for distribution to persons on relief, including donations for charitable purposes; the quantity of each variety sold for consumption in fresh form within the production area; the quantity of each variety exported to countries other than Canada; the quantity of each variety sold or otherwise disposed of for canning or for manufacturing into by-products; and the quantity of each variety disposed of otherwise.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handlers furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

§ —.48 Records.

Each handler shall maintain such records of all grapefruit, handled, sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the committee. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the committee may direct.

§ —.49 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where grapefruit are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers premises and any and all records of such handlers with respect to matters within the purview of this part.

MISCELLANEOUS PROVISIONS

§ —.50 Compliance.

Except as provided in this part, no handler shall handle grapefruit, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder, and no handler shall handle grapefruit except in conformity to the provisions of this part.

§ —.51 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by

the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§—52 Termination.

(a) The Secretary at any time may terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall, whenever he finds that any or all provisions of this part obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or such provision thereof.

(c) The Secretary shall terminate the provisions of this part at the end of the then current fiscal period whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of grapefruit within the production area, provided that such majority have during such representative period produced for market more than 50 percent of the volume of such grapefruit produced for market.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§—53 Proceedings after termination.

(a) Upon the termination of the provisions of this part the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trustees shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in

the committee or the trustees pursuant to this part.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§—54 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this part of any regulation issued pursuant to this part, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§—55 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§—56 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§—57 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others in any way whatever, to any handler or to any person for errors in judgement, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§—58 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any person, circumstance, or thing, shall not be affected thereby.

§—97 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original. * * *

§—98 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party. * * *

§—99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue pursuant to the act, an order providing for regulating the handling of grapefruit in the same manner as is provided for in this agreement. * * *

Copies of this notice may be obtained from the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250; or from the Los Angeles Marketing Field Office, Fruit and Vegetable Division, AMS, 417 South Hill St., Suite 900-B, Los Angeles, California, 90012.

Signed at Washington, D.C. on February 1, 1979.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.
[FR Doc. 79-4104 Filed 2-6-79; 8:45 am]

[3410-02-M]

[7 CFR Ch. IX]

[Docket No. AO 3851]

GRAPEFRUIT GROWN IN A DESIGNATED AREA
IN CALIFORNIA

Hearing on Proposed Marketing Agreement
and Order

AGENCY: Agricultural Marketing
Service, USDA.

ACTION: Public hearing on proposed
rulemaking.

SUMMARY: The hearing is being held to consider a proposed marketing agreement and order regulating the handling of grapefruit grown in a designated area, in California. The principal provisions to be considered are: (1) establishment of an administrative committee of four California grape-

fruit producers, four California grapefruit handlers, and one public member to assist the Secretary of Agriculture in administering the proposed marketing agreement and order program; (2) authorization for grade, size, and quality regulations; (3) authorization for production research and marketing research and development projects, including advertising; and (4) provisions relative to definitions, expenses and assessments, inspection and certification, reporting requirements, and certain miscellaneous provisions included in all marketing agreement and order programs.

DATE: The hearing will begin March 8, 1979.

ADDRESS: The hearing will be held in the Jennings Auditorium, Avenue 52 and Highway 111, Coachella, California.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202 447-6393).

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at Coachella, California, on March 8, 1979, at 9:30 a.m., local time in the Jennings Auditorium, Coachella, California, with respect to a proposed marketing agreement and order regulating the handling of grapefruit grown in a designated area in California. The proposed marketing agreement and order have not received the approval of the Secretary of Agriculture.

At the present time, marketing order No. 909 (7 CFR Part 909) regulates grapefruit grown in Arizona and in a designated area in California. In recent years, the views of California growers and Arizona growers have differed relative to marketing activity, grade and size regulations, and other matters under the present order. Thus, the two groups concluded that separate marketing orders for the designated area of California and for Arizona would be desirable. This document gives notice of a public hearing to consider a proposed marketing agreement and order for grapefruit grown in designated area in California. An action to conduct a public hearing to consider a proposed marketing order for grapefruit grown in Arizona also has been initiated by the Department.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The public hearing is for the purpose of:

(a) Receiving evidence with respect to the economic and marketing condi-

tions which relate to the proposed marketing agreement and order hereinafter set forth, and any appropriate modifications thereof;

(b) Determining whether the handling of grapefruit grown in the area proposed for regulating is in the current of interstate commerce or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement or order regulating the handling of such grapefruit in the area; and

(d) Determining whether provisions specified in the proposal or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the act.

The request for the hearing was submitted by the California members of the Administrative Committee. The Administrative Committee is the local agency administering Marketing Order No. 909 (7 CFR Part 909) which currently regulates the handling of grapefruit grown in Arizona and in a designated part of California. The provisions of the proposed marketing agreement and order are as follows (the sections identified with asterisks (***) apply only to the proposed marketing agreement and not to the proposed marketing order):

DEFINITIONS

§ —.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ —.2 Act.

"Act" means Pub. L. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ —.3 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ —.4 Grapefruit.

"Grapefruit" means all varieties of Citrus paradisi, MacFayden, grown in the production area.

§ —.5 Production area.

"Production area" means the following counties or their segments in the State of California described as follows: Imperial County; that part of San Bernardino County situated east

of a line drawn due north and south through Rice; that part of Riverside County situated east of a line due north and south through the Post Office in Whitewater; and that part of San Diego County situated east of a line drawn north and south through the Post Office in Julian.

§ —.7 Producer.

"Producer" is synonymous with grower and means any person engaged in a proprietary capacity in the commercial production of grapefruit.

§ —.8 Handler.

"Handler" means any person (except a common or contract carrier of grapefruit owned by another person) who handles grapefruit in fresh form.

§ —.9 Handle.

"Handle" means to sell, ship, consign, deliver, or transport grapefruit or cause grapefruit to be sold, shipped, consigned, delivered, or transported between the production area and any point outside thereof, or within the production area. *Provided*, That the term handle shall not include (a) the transporting or shipping of grapefruit by common carrier when such grapefruit is owned by another person; (b) the sale of grapefruit on tree; (c) the transporting of grapefruit from the point of production to a packinghouse within the production area for preparation for fresh market; or (d) the transporting of grapefruit from the point of production to a packinghouse outside the production area for preparation for fresh market under a special handling permit issued pursuant to § —.45.

§ —.10 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on September 1 of one year and ending on the last day of August of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ —.11 Variety.

"Variety" means either or both of the following classifications of grapefruit: (a) White or golden seeded and white or golden seedless grapefruit; and (b) pink or red seeded grapefruit and pink or red seedless grapefruit.

§ —.12 Committee.

"Committee" means the California Grapefruit Administrative Committee established under § —.20.

§ —.20 Establishment and membership.

(a) There is hereby established a California Grapefruit Administrative Committee consisting eight members, each of whom shall have an alternate.

Four of the members and their alternates shall be producers or officers or employees of producers (hereinafter referred to as "producer members") but, to the extent practicable shall not be handlers or directors or employees exercising a supervisory or managerial function of a handler. Members of a cooperative marketing organization shall not be considered as handlers because of such membership. Four of the members and their alternates shall be handlers or directors, officers, or employees of a handler (handler members). The committee may be increased by one public member and alternate, nominated by the committee and selected by the Secretary.

(b) *Allocation of producer membership.* (1) To the extent practicable, allocation of the producer member positions shall be at least one member to represent producers affiliated with cooperative marketing organizations, herein referred to as "cooperative growers" and at least one member to represent growers who are not so affiliated, herein referred to as "independent growers". A second producer member shall be allocated to any group (cooperative or independent) which during the fiscal period preceding the fiscal period in which nominations are made produced more than 37.5 percent but not more than 62.5 percent of the total production of grapefruit; and any group whose production is more than 62.5 percent shall be allocated a third member. At least one producer alternate member shall be a producer from outside that portion of Riverside County which is east of a line drawn north and south through the post office at Whitewater and west of a line drawn north and south through Shaver's Summit, and any such alternate member need not be of the same affiliation as the member.

(2) To the extent practicable, not more than one producer member and such member's alternate shall be affiliated with the same packinghouse or handling organization.

(c) *Allocation of handler membership.* (1) Allocation of handler member positions shall be at least one member to represent cooperative marketing organizations, herein referred to as "cooperative handlers" and at least one member to represent handlers who are not cooperative marketing organizations, herein referred to as "independent handlers". A second handler member shall be allocated to any group (cooperative or independent) which during the fiscal period preceding the fiscal period in which nominations are made handled more than 37.5 percent but not more than 62.5 percent of the total quantity of grapefruit handled by all handlers; and any group which handled more than 62.5

percent shall be allocated a third member.

(2) To the extent practicable, not more than one handler member and alternate shall be from the same handling organization.

(3) To the extent practicable, each handler alternate member shall be affiliated with the same handling organization as the member for whom he or she is an alternate.

(d) The committee may, with the approval of the Secretary, provide such other allocation of producer or handler membership, of both, as may be necessary to assure equitable representation.

§—21 Term of office.

The term of office of the members and alternate members shall be two fiscal periods: *Provided*, That, the term of office of initial members and alternates shall begin as soon as practicable subsequent to the effective date of this part and end August 31, 1981. Each member and alternate shall serve during the term of office for which that person is selected and has qualified and shall continue to serve until a successor is selected and has qualified.

§—22 Nomination.

(a) *Initial producer and handler members.*

Nomination for the initial members and alternate members of the committee for each position may be submitted to the Secretary by individual producers and handlers. Such nominations may be made by means of meetings of handlers and meetings of producers of the applicable groups (cooperative or independent). Any such nominations shall be filed with the Secretary not later than the effective date of this part. If such nominations are not filed as specified in this section, the Secretary may select initial members and alternate members, without regard to nomination, on the basis of the representation provided in §—20.

(b) *Successor producer members.*

(1) The Secretary shall cause to be held, not later than July 1 of each odd-numbered year, meetings of producers for the purpose of making nominations for members and alternate members of the committee. Any required reapportionment of producer membership shall be announced at such meetings prior to making of any nominations.

(2) Only producers, including duly authorized officers or employees of producers, who are present shall participate in the nomination of producer members and alternates. Each producer shall be entitled to cast only one vote for each nominee to be selected. To the extent practicable, only producers affiliated with cooperative mar-

keting organizations may elect nominees affiliated with such organizations; and only producers not affiliated with cooperative marketing organizations may elect nominees not so affiliated. In the event some of a producer's grapefruit is handled through a cooperative marketing organization and some is handled through an organization that is not a cooperative marketing organization, such producer shall be eligible to participate only in the category (i.e.; cooperative or independent) in which such producer's major volume of fruit is handled.

(3) Any required reapportionment of committee membership shall be announced at nomination meetings prior to the making of any nomination.

(c) *Successor handler members.*

(1) The Secretary shall cause to be held, not later than July 1 of each odd-numbered year, meetings of handlers for the purpose of making nominations for members and alternate members of the committee. Any required reapportionment of handler membership shall be announced at such meetings prior to making of any nominations.

(2) Only handlers, including duly authorized officers or employees of handlers, who are present and who are eligible to serve as handler members of the committee shall participate in the nomination of handler members and alternate handler members of the committee. Each handler shall be entitled to cast only one vote for each nominee to be selected.

(3) To the extent practicable, only handlers affiliated with cooperative marketing organizations may vote for nominees affiliated with such organizations; and only handlers not affiliated with cooperative marketing organizations may vote for nominees not so affiliated.

(d) *Successor public member.* Nominations for the public member and alternate member shall be made by the committee. Any such nominees shall be residents of the production area.

(e) *Failure to nominate.* In the event nominations are not made as specified in §—22, the Secretary may select members and alternate members, without regard to nominations, from any eligible persons.

§—23 Selection.

The Secretary shall select members and alternates of the committee from persons nominated pursuant to §—22 or from other persons eligible for nomination for such positions.

§—24 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with

the Secretary promptly after being notified of such selection.

§ —.25 Alternate members.

An alternate member shall act in the place of the member during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for that member until a successor for such member is selected and has qualified. In the event that neither the member nor that member's alternate are able to attend a committee meeting, the chairman, with the concurrence of the majority of the members present may designate any other alternate present who is not acting as a member to serve in such member's place at that meeting. To the extent practicable, any such alternate so designated shall have the same affiliation as the absent member and only producer alternates may serve for absent producer members and only handler alternates may serve for absent handler members.

§ —.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in § —.22. If nomination to fill any such vacancy is not made within 30 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

§ —.27 Powers.

The committee shall have the following powers:

- (a) To administer this part in accordance with its terms and provisions;
- (b) To make and adopt rules and regulations to effectuate the terms and provisions of this part;
- (c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and
- (d) To recommend to the Secretary amendments to this part.

§ —.28 Duties.

It shall be the duty of the committee:

- (a) To select a chairman from its membership, and to select such other officers and adopt such rules and regulations for the conduct of its business as it may deem advisable;
- (b) To keep minutes, books, and records which will clearly reflect all of its acts and transactions, which minutes, books, and records shall at all times be subject to the examination of the Sec-

retary; and to mail a copy of the minutes to the Secretary promptly following each committee meeting and to any other interested person who has filed his name and address with the committee for such purposes.

(c) To act as intermediary between the Secretary and the producers and handlers;

(d) To furnish the Secretary with such available information as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;

(f) To cause its books to be audited by a competent public accountant at least once for each fiscal period, and at such other times as it deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;

(g) To prepare a monthly statement of financial operations of the committee and to make such reports, together with the minutes of the meetings of the committee, available for inspection by any producer or handler at the office of the committee;

(h) To determine as near as practicable the total crop of grapefruit, and to make such determinations, including determinations by grade and size as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;

(i) To investigate the growing, handling, and marketing conditions with respect to grapefruit and to assemble data in connection therewith;

(j) To prepare and mail, as soon as practicable after the close of each fiscal period, to the Secretary, and to each handler and grower who make requests therefor, an annual report covering the operation of the previous fiscal period;

(k) With the approval of the Secretary, to increase or decrease the membership of the committee;

(l) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies in connection with all proper committee activities and objectives under this part; and

(m) To establish, with the approval of the Secretary, procedures for the nomination of and qualification for a public member and alternate.

§ —.29 Compensation and expenses.

The members of the committee, and alternates when acting as members, shall serve without compensation; but they shall be reimbursed for reasonable expenses, as approved by the committee, incurred by them in the performance of their duties under this part. Alternate members shall be reimbursed for expenses necessarily incurred by them in attending commit-

tee meetings at the request of the committee, notwithstanding that the committee member for whom they serve as alternate also attends such meeting, and for performing other committee business at the request of the committee.

§ —.30 Procedure.

(a) Two-thirds of the number of members constituting the committee, including alternates acting for members, shall be necessary to constitute a quorum and concurrence by at least a majority of the number of members constituting the committee shall be necessary to pass any motion. *Provided*, That, not less than one cooperative grower or handler member and one independent grower or handler member shall concur in an action for such action to be valid. At assembled meetings, each vote must be cast in person.

(b) The committee shall give to the Secretary, and to any other interested persons who have filed their names and addresses with the committee requesting such notice, the same notice of meetings of the committee as is given to the members if the committee.

(c) Except at an assembled meeting, the committee may vote by telephone, telegraph, or other means, and any such vote so cast shall be confirmed promptly in writing.

EXPENSES AND ASSESSMENTS

§ —.34 Expenses.

The committee is authorized to incur such expenses, including inspection expenses, as the Secretary finds are reasonable and likely to be incurred to carry out the functions of the committee during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers, as provided in § —.35.

§ —.35 Assessments.

(a) Each handler who first handles grapefruit shall, with respect to the grapefruit so handled, pay to the committee, upon demand, such handler's pro rata share of expenses which the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning during each fiscal period. Such handler's pro rata share of such expenses shall be equal to the ratio between the total quantity of grapefruit handled by that handler as the first handler thereof, during the applicable fiscal period, and the total quantity of grapefruit so handled by all handlers during the same fiscal period.

(b) The Secretary shall fix the rate(s) of assessment to be paid by handlers and such rate(s) may be fixed

by variety. At any time during or after a fiscal period, the Secretary may increase the rate(s) of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Such increased rate(s) shall be applicable to all grapefruit handled during that fiscal period and may be fixed on the basis of the variety of grapefruit, as appropriate. To provide funds for the administration of this part, the committee may accept the payment of assessments in advance, or may borrow money for such purpose.

(c) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(d) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary.

(e) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of expenses.

§—36 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the handlers from whom it was collected: *Provided*, That any sum paid by a handler in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such handler.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That such reserve shall not exceed an amount approximating one full fiscal period's expenses, exclusive of inspection costs. Any such reserve may be maintained by varietal type. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iii) to defray expenses in-

curring during any period when any or all provisions of this part are suspended or are inoperative, or (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the handlers from whom such funds were collected.

(b) All funds received by the committee shall be used solely for purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH AND MARKET DEVELOPMENT

§—37. Production research, marketing research, and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve or promote the marketing, distribution, consumption or efficient production of any variety or varieties of grapefruit. The expense of such activities shall be paid from funds collected under §—35. Such projects may provide for any form of marketing promotion, including paid advertising. Any such project for promotion and advertising may utilize an identifying mark or term which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe.

REGULATION

§—38 Marketing policy.

Prior to submitting recommendations under §—39, the committee shall submit to the Secretary a report setting forth the marketing policy it deems advisable for the ensuing fiscal period. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the

demand and supply situation for grapefruit. The committee shall publicly announce the submission of each marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or handler. In determining each such marketing policy the committee shall give due consideration to the following:

- (a) Market prices by grade and size of each variety of grapefruit;
- (b) Supply of grapefruit by grade and size of each variety of grapefruit;
- (c) Supply of competing fruits;
- (d) Expected demand conditions for grapefruit in different market outlets;
- (e) Type of regulation expected to be recommended during the fiscal period;
- (f) Trend and level of consumer income;
- (g) Marketing conditions affecting grapefruit prices; and
- (h) Other relevant factors.

§—39 Recommendations for grade and size regulation.

Whenever the committee finds it advisable to regulate the handling of particular grades or sizes of any variety of grapefruit during any period, it shall recommend such regulation for that period. Recommendations may include different size limitations for any variety handled to any of the marketing zones established pursuant to §—43.

§—41 Issuance of regulations.

(a) Whenever the Secretary finds from the recommendation and information submitted by the committee or from other available information, that limiting the handling of any variety of grapefruit to particular grades or sizes, or both, would tend to effectuate the declared policy of the act, he shall so limit the handling of that variety for a specified period; and the limitation may prescribe different size requirements for the handling of such variety by the initial handler thereof directly to the marketing zones specified. The committee shall be informed immediately of any such regulation issued by the Secretary; and the committee shall promptly give adequate notice thereof to handlers.

(b) Whenever the Secretary finds from the recommendation and information submitted by the committee, or from other available information, that to establish and maintain in effect minimum standards of quality or maturity, or both, for the handling of grapefruit during any period would tend to effectuate the declared policy of the act and be in the public interest, he shall establish such standards, designate such period, and so limit the handling of such grapefruit. The Secretary shall immediately notify the committee of the issuance of any such

regulation; and the committee shall promptly give adequate notice thereof to handlers.

§—42 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued under § .41 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendation and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of grapefruit in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§—43 Marketing zones.

The committee, with the approval of the Secretary, may prescribe different size requirements for any variety of grapefruit handled for shipment to the following marketing zones:

(a) Zone 1: The States of Arizona and California.

(b) Zone 2: The State of Florida.

(c) Zone 3: The State of Texas.

(d) Zone 4: The States of Washington, Oregon, Montana, Idaho, Wyoming, Nevada, and Utah.

(e) Zone 5: The States not included in Zones 1, 2, 3, 4, and 6.

(f) Zone 6: The States of Hawaii and Alaska and all export markets.

§—44 Fruit not subject to regulation.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of Sections —.35, —.41 and —.42 and the regulations issued thereunder, ship grapefruit of any variety as follows: (1) to a charitable institution for consumption at such institution; (2) to a relief agency for disposition by such agency; (3) for conversion by a commercial processor into any processed or manufactured product, including canned or bottled grapefruit or grapefruit juice, frozen products or beverage base; or (4) by express, parcel post or common or contract carrier in units of five cartons or less.

(b) Upon the basis of recommendation and information submitted by the committee, or from other available information, the Secretary may relieve in whole or in part from any or all of the requirements under this part, the handling of grapefruit in such mini-

mum quantities, in such types of shipments, in such types of outlets, or for such specific purposes as the committee may recommend.

(c) The committee shall, with the approval of the Secretary, prescribe rules, regulations, and safeguards necessary to assure compliance with this section. Such rules, regulations, and safeguards may include requirements that handlers shall file applications and receive approval from the committee for authorization to handle grapefruit under this section, and that such application be accompanied by certification by the intended purchaser or receiver that the grapefruit will not be used for any purpose not authorized by this section.

§—45 Special handling permit.

The committee may issue special handling permits authorizing the transportation of grapefruit in bulk lots which do not meet the applicable grade and size regulations to packing facilities outside the production area for preparation for fresh market. All such lots shall be handled in accordance with the rules and regulations prescribed by the committee with the approval of the Secretary, and shall be subject to assessment, and the inspection and certification requirements prescribed by §§ —.35, —.41, and —.42. Any special handling permit may be revoked by the committee if the holder of such permit fails to comply with the applicable rules and regulations.

INSPECTION AND CERTIFICATION

§—46 Inspection and certification.

(a) During any period in which the Secretary has regulated the handling of any variety or varieties of grapefruit pursuant to § —.41, or § —.42, each handler shall, prior to the handling of any lot of such variety or varieties, cause such lot to be inspected by an authorized representative of the Federal or Federal-State Inspection Service. Promptly thereafter, such handler shall submit to the committee a copy of the inspection certificate issued thereon. The provisions of this section shall not be applicable to any lot which has been so inspected and a copy of such inspection certificate has been submitted to the committee.

(b) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

REPORTS

§—47 Reports.

(a) *General.* For the purpose of enabling the committee to perform its functions and duties under this part, each handler shall furnish to the committee such information in such form and at such times and substantiated in such manner as shall be prescribed by the committee and approved by the Secretary.

(b) *Shipping manifest report.* The committee may require information from each handler regarding the grade, size, and variety of each carton contained in each individual shipment made by such handler, and may require such information to be delivered to the committee within twenty-four hours after such shipment is made, in such manner as the committee may request and upon forms prepared by it.

(c) *Disposition report.* The committee may, from time to time, require each handler to furnish the following information with respect to grapefruit: the quantity of each variety handled in interstate commerce and to Canada; the quantity of each variety handled by express and parcel post; the quantity of each variety handled for distribution to persons on relief, including donations for charitable purposes; the quantity of each variety sold for consumption in fresh form within the production area; the quantity of each variety exported to countries other than Canada; the quantity of each variety sold or otherwise disposed of for canning or for manufacturing into by-products; and the quantity of each variety disposed of otherwise.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

§—48 Records.

Each handler shall maintain such records of all grapefruit, handled, sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the committee.

All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the committee may direct.

§—49 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where grapefruit are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

MISCELLANEOUS PROVISIONS

§—50 Compliance.

Except as provided in this part, no handler shall handle grapefruit, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder, and no handler shall handle grapefruit except in conformity to the provisions of this part.

§—51 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§—52 Termination.

(a) The Secretary may, at any time, terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall, whenever he finds that any or all provisions of this part obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or such provision thereof.

(c)(1) The Secretary shall terminate the provisions of this part at the end of the then current fiscal period whenever he finds that continuance is not

avored by producers; but any such termination shall be announced before June 15 of such fiscal period.

(2) To determine whether continuance is favored by producers, the required percentages set forth in the act with respect to producer approval of the issuance of a marketing agreement and order regulating the handling of citrus fruits produced in any area producing what is known as California citrus fruits (approval by three-fourths of the producers who, during a representative period, determined by the Secretary, have been engaged, within the production area, in the production of grapefruit for market; or by producers who, during such representative period, have produced for market at least two-thirds of the volume of grapefruit produced within the production area for market) shall be used. In the event that a referendum is utilized to aid in making this determination, such required percentages for continuance shall be held to be complied with if, of the total number of producers, or the total volume of grapefruit produced for market, as the case may be, represented in such referendum, the percentage favoring continuance is equal to or in excess of the percentage required.

(d) The Secretary shall conduct a referendum no later than May 15, 1985, and no later than that date every five years thereafter to ascertain whether continuance of this part is favored by producers. The committee may request that the Secretary conduct a referendum during any fiscal period, provided such request is made prior to March 15. In the event any such referendum is conducted (other than a referendum which may be conducted in conjunction with promulgation of this part), prior to May 15, 1985, a new five-year interim period for continuance referendum will be determined from the date of such referendum.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§—53 Proceedings after termination.

(a) Upon the termination of the provisions of this part the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all funds and property than in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trustees shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to

time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this part.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§—54 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§—55 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§—56 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises, whenever such action is deemed advisable.

§—57 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others in any way whatever, to any handler or to any person for errors in judgement, mistakes, or other acts, either or commission or omission, as such member, alternate, agent, or employee, except for acts of

dishonesty, willful misconduct, or gross negligence.

§ —.58 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person; circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any person, circumstance, or thing, shall not be affected thereby.

§ —.97 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original. * * *

§ —.98 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party. * * *

§ —.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue pursuant to the act, an order providing for regulating the handling of grapefruit in the same manner as is provided for in this agreement. * * *

Copies of this notice may be obtained from the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250; or from the Los Angeles Marketing Field Office, Fruit and Vegetable Division, AMS, 417 South Hill St., Suite 900-B, Los Angeles, California 90012.

Signed at Washington, D.C. on February 1, 1979.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.
[FR Doc. 79-4103 Filed 2-6-79; 8:45 am]

[7590-01-M]

**NUCLEAR REGULATORY
COMMISSION**

[10 CFR Part 50]

**ACCEPTANCE CRITERIA FOR EMERGENCY
CORE COOLING SYSTEMS FOR LIGHT-
WATER-COOLED NUCLEAR POWER PLANTS**

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Extension of comment period.

SUMMARY: The Nuclear Regulatory Commission is extending the public comment period on its advance notice of proposed rulemaking to amend 10 CFR Part 50, Acceptance Criteria for Emergency Core Cooling Systems For Light-Water-Cooled Nuclear Power Plants for an additional one month period. The advance notice of proposed rulemaking was published on December 6, 1978 (43 FR 57157). The comment period expired February 5, 1979.

DATES: New comment period expires March 5, 1979.

ADDRESSES: Interested persons are invited to submit written comments and suggestions to the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H. Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION
CONTACT:**

Mr. James A. Norberg, Office of Standards Development, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Telephone 301-443-5921.

Dated at Washington, D. C., this 1st day of February 1979.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 79-4144 Filed 2-6-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 34566; EDR-371]

[14 CFR Part 299]

AIRCRAFT ACQUISITIONS

JANUARY 24, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Act makes certain types of aircraft acquisitions unlawful unless they are first approved by the Board. This notice proposes, at the Board's initiative, to expand the current exemption from that section of the Act.

DATES: Comments by: April 9, 1979. Reply comments by: April 24, 1979.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: February 21, 1979. Docket Section prepares the Service List and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711 as soon as they are received.

**FOR FURTHER INFORMATION
CONTACT:**

Barry L. Molar, Special Authorities Division, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, 202-673-5918.

SUPPLEMENTARY INFORMATION: Sections 408 (a)(2) and (a)(3) of the Federal Aviation Act of 1958, as amended, require certain persons to obtain Board approval before acquiring a substantial portion of the properties of an air carrier or a person substantially engaged in the business of aeronautics. Since this prior approval requirement imposes an undue burden on simple aircraft acquisitions, Part 299 of the Economic Regulations (14 CFR Part 299) currently exempts acquiring air carriers from it for a wide range of transactions. We propose to further extend the exemption.

A fuller description of the existing rule will assist in the understanding of our proposed changes. The current rule generally provides an exemption for aircraft leases, purchases or leases with purchase option, which involve air carriers, which result from arm's length bargaining between parties that are not linked by interlocking relationships or common financial interests, and which do not involve joint undertakings for operations (i.e., wet leases, equipment interchanges, or profit sharing arrangements). Depending on the type of carrier involved, however, there are limits on the size of transactions which may qualify for the exemption. Where a certificated route carrier is involved, a transaction

cannot involve more than 10 aircraft, aircraft with \$30 million in market value, or aircraft representing more than 20 percent of the certificated route carrier's fleet. The latter figure is based on fleet count, market value and lift capacity. If the aircraft involved exceed 20 percent of the carrier's fleet in any of these categories, the transaction is ineligible for exemption. These limitations do not apply to carriers other than certificated route carriers. For example, it is possible under the exemption to acquire all of a charter air carrier's fleet, regardless of the number of aircraft involved or their market value. In all cases, however, an air carrier must be the person acquiring the aircraft, in order for the exemption to apply.

EXPANSION OF ELIGIBILITY

We are proposing a number of substantive changes, as well as certain procedural changes. First, we propose to make the exemption applicable in cases where persons other than air carriers are acquiring the aircraft. The current rule exempting only air carriers reflects the limits of the Board's section 416 exemption powers before passage of the Airline Deregulation Act, Pub. L. 95-504. Before the Deregulation Act, the Board could exempt only air carriers, and so it could not use its rulemaking powers to exempt other classes of persons from section 408. Thus, aircraft transactions involving foreign air carriers or aircraft dealers have been subject to Board review individually. Under Pub. L. 95-504, the Board now has authority to exempt other classes of persons. Since these aircraft transactions generally represent attempts by air carriers to adjust their fleet size to meet market conditions, we see no compelling public interest reason to differentiate here among transactions on the basis of the identity of the person acquiring the aircraft. Therefore, we propose to use our recently expanded section 416 exemption power to exempt "any person or class of persons," by extending the Part 299 exemption to all persons except indirect air carriers. Since the acquisition of aircraft by an indirect air carrier might jeopardize its status as an indirect air carrier, we wish to retain an opportunity to scrutinize such transactions.

EXEMPTION OF TRANSACTIONS BETWEEN INTERLOCKED PARTIES

The second substantive change relates to the interlocking relationship exception. We propose revising the rule so that an interlocking relationship between the parties would not preclude the exemption from applying to a transaction so long as there were no control relationships between the parties as well. Aircraft transactions of

this type usually involve the financing of new equipment by a group of banks or other financial institutions through a sale-and-lease-back arrangement. Our experience with these types of transactions has convinced us that the presence of a common director does not materially affect the terms of these arrangements. Logic supports this conclusion. The interlocked institution would be only one of several participants providing the financing, and since all of them would have to be satisfied with the terms of the arrangement, favoritism between the interlocked parties would be a practical impossibility. The transaction would still have to satisfy the "arm's length bargaining" requirement. However, for the purpose of this rule, the presence of a common director would not, by itself, defeat that requirement.

CHANGES TO THE SIZE LIMITATIONS

The third substantive change involves the limitations on the size of transactions. We would continue to treat certificated route carriers differently from other carrier classes *i.e.*, transactions between carriers, regardless of transaction size or the proportion involved, would continue to be exempt, if a certificated route carrier is not involved. Thus acquisition of the entire fleet of a commuter carrier or a charter carrier would be exempt. Where a certificated route carrier is involved, we proposed to maintain the 20 percent limit, with the modification described below. Our *laissez-faire* approach to other than certificated route carriers has always been based on our recognition of the differences in the environments in which these classes of carriers operate. Carriers other than certificated route carriers operate in an essentially unregulated environment populated by many carriers. Capital requirements for non-route operations can be, on the average, less than for substantial route operations. Under these circumstances the competitive market forces and arm's length nature of transactions is sufficient to protect the public interest. We have no information to indicate that this policy has been erroneous or should be otherwise altered.

In contrast, the certificated route carrier segment has been, because of regulatory restraints and somewhat higher capital requirements, much less competitive. In addition, in the past, the Board has been concerned that carriers maintain their ability to perform their certificate obligations and has maintained stricter scrutiny for this reason. Although the Airlines Deregulation Act has mandated increased competition and redefined the concept of service obligations, the certificated segment of the industry is not yet fully competitive, nor have

service obligations disappeared entirely. For these reasons, we believe that it would not be in the public interest to discontinue scrutiny of substantial aircraft transactions involving certificated route carriers at this time.

Although we would continue to limit the size of transactions that are exempt where a certificated route carrier is involved, we propose to eliminate the 10 aircraft and \$30 million limits. The only size limitation on the exemption would be the 20 percent of carrier fleet rules. As under the current rule, to qualify for the exemption, a transaction would have to involve less than 20 percent of the certificated route carrier's fleet on the basis of all three measures (*i.e.*, number of aircraft in fleet, market value of fleet, and lift capacity of fleet). The 10 plane and \$30 million limits have brought before us transactions which, while substantial in absolute terms, have not been substantial in proportion to the total fleet of the selling or leasing carrier and have been, therefore, of little regulatory concern. The language of the Airline Deregulation Act gives the Board jurisdiction over acquisitions of "a substantial portion" of the properties of an aeronautical enterprise. The use of a strictly percentage test would, we believe, come closest to matching the statutory test. We are satisfied that, in general, transactions of 20 percent or less will merely represent adjustment in carriers' fleets to meet changing market conditions.

DECLINATION OF JURISDICTION BELOW 20 PERCENT

The first procedural change is in the way we implement the 20 percent limit. The size limitations have consistently been stated as limits on the exemption. As suggested above, we believe that they have implicitly represented the Board's determination of what constituted "a substantial part" (old Act) or "a substantial portion" (new Act) of the properties of an aeronautical enterprise, and hence a determination of the Board's jurisdiction under sections 408 (a)(2) and (a)(3). If the aircraft do not make up a substantial portion of an air carrier's fleet, then no exemption is needed, because the transaction in question is not prohibited by sections 408 (a)(2) and (a)(3). Therefore, we propose to apply the 20 percent limitation discussed above as our declaration of jurisdiction standard. As under the current rule, transactions below the 20 percent limit would not require prior Board approval. However, the reason would not be because they are exempt, as currently is the case, but rather because the Board declined to treat the transactions as coming within its jurisdiction under sections 408 (a)(2) and (a)(3).

ELIMINATION OF FILING REQUIREMENT

Our second procedural change is the proposed elimination of the requirement to file the lease or purchase agreement. The current § 299.3 requires carriers to file copies of these agreements to qualify for the exemption. The filing requirement has served its original purposes of keeping us informed of equipment acquisitions in the industry and helping us decide when changes in Part 299 are advisable. We have not generally imposed a filing requirement in giving exemptions in the antitrust area (sections 408, 409, and 412). With almost 20 years of experience we see no reason to continue to differentiate aircraft transaction and so we have tentatively concluded that further filings are unnecessary.

Finally, we note that the proposal extends only to the prior approval requirements of sections 408 (a)(2) and (a)(3). A transaction covered by this proposal will still need prior approval if it is covered by another portion of section 408, and will need to be filed with us if it affects foreign air transportation and is covered by section 412. Similarly, the proposal does not release a party to an aircraft sale or lease agreement from conditions in any Board order prohibiting or limiting transactions involving that party.

Accordingly, the Civil Aeronautics Board proposes to revise Part 293 of its Economic Regulations (14 CFR Part 299) to read:

PART 299—EXEMPTION FROM CERTAIN REQUIREMENTS OF SECTION 408 OF THE FEDERAL AVIATION ACT

Sec.

299.1 Definitions.

299.2 Declination of jurisdiction.

299.3 Exemption.

299.4 Termination of exemption.

299.5 Effect of exemption.

AUTHORITY: Sections 204 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386.

§ 299.1 Definitions.

For the purposes of this part:

(a) "Aircraft" means any aircraft, as defined in the Act, together with spare parts and accessories maintained for installation or use on it.

(b) "Indirect air carrier" means any air carrier that does not engage directly in the operation of aircraft in air transportation.

(c) "Financial interest" means 5 percent or more of the outstanding debt, or 5 percent or more of any class of the capital stock, of a person.

§ 299.2 Declination of jurisdiction.

(a) The Board declines to exercise its jurisdiction under sections 408 (a)(2) and (a)(3) of the Act over any transaction that involves only the purchase,

lease, or lease with purchase option of aircraft that make up not more than 20 percent of the seller's or lessor's total number, market value, and lift capacity of aircraft.

(b) For the purposes of this section, a series of transactions within a 6-month period will be considered a single transaction.

(c) For the purposes of this section, the total number of a person's aircraft includes all aircraft of that person except aircraft that are under lease to that person for a period of 6 months or less and aircraft that are owned by that person but under lease to some other person for a period of more than 6 months.

(d) The Board reserves the right to assert the jurisdiction described in paragraph (a) of this section when the public interest requires it.

§ 299.3 Exemption.

Any person other than an indirect air carrier shall be exempt from sections 408 (a)(2) and (a)(3) of the Act with respect to a purchase, lease, or lease with purchase option of aircraft from an air carrier other than an air carrier holding a certificate of public convenience and necessity under sections 401 (d)(1) or (d)(2), or from a person substantially engaged in the business of aeronautics, if the underlying agreement is the result of arm's length bargaining and does not involve any of the following:

(a) A purchase, lease, or lease with purchase option by a person:

(1) That owns, directly or beneficially, any financial interest in the person whose aircraft are being purchased or leased;

(2) In which any financial interest is owned, directly or beneficially, by the person whose aircraft are being purchased or leased;

(3) That controls, is controlled by, or is under common control with the person whose aircraft are being purchased or leased;

(4) That has an officer or director who is an officer or director of a corporation, or a member of a firm, that directly or beneficially owns 5 percent or more of the outstanding stock of the person whose aircraft are being purchased or leased; or

(5) That is a party to an executory agreement with the person whose aircraft are being purchased or leased that will, or may upon consummation, result in any of the relationships set forth in this paragraph.

(b) A lease with crew or an aircraft interchange agreement.

(c) A purchase or lease agreement under which the payment is directly related to the gross revenue or profits derived from operating the aircraft.

§ 299.4 Termination of exemption.

The Board may terminate the exemption granted by this part with respect to any transaction that it finds to be inconsistent with the public interest.

§ 299.5 Effect of exemption.

(a) The exemption granted by this part shall not be considered a determination for ratemaking purposes of the reasonableness of the transaction or an "order made under sections 408, 409, or 412" within the meaning of section 414 of the Act.

(b) This rule does not release a party to an aircraft sale or lease agreement from conditions in any Board order prohibiting or limiting transactions involving that party.

(c) This rule does not affect any duty that a person may have under the remaining provisions of section 408 or under section 412 of the Act with respect to a purchase, lease, or lease with purchase option of aircraft.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-4102 Filed 2-6-79; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

[15 CFR Part 30]

FOREIGN TRADE STATISTICS

Requirement for Employer Identification Number and Change in Value Requirement for filing of Shipper's Export Declarations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend the Foreign Trade Statistics Regulations (FTSR) to provide that an exporter's identification number be reported on the Shipper's Export Declaration. It is also proposed to amend the Foreign Trade Statistics Regulations to raise the upper limit of the present exemption from Shipper's Export Declaration filing requirements based on value from \$250 to \$500. Since exporters will be using identification numbers already assigned, the requirement for an identification number imposes only a minimal burden on the reporting public that is more than offset by the anticipated increase in reliability of published export statistics and will enhance the usefulness of the data by exporters for marketing purposes. Raising the value exemption from Shipper's Export Declaration filing requirements to \$500 is a change which relieves documentation burdens. Fa-

cilitation of the expansion of U.S. exports make these changes necessary.

DATE: Comments should be submitted on or before March 9, 1979.

ADDRESS: Send comments to Director, Bureau of the Census, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT:

Emanuel A. Lipscomb, Chief, Foreign Trade Division (301) 763-5342.

SUPPLEMENTARY INFORMATION:

The proposed requirement for an identification number on the Shipper's Export Declaration will serve a number of needs; e.g., it will enable us more easily to contact exporters with systematic reporting problems and thus improve our published statistics, permit us to obtain valuable data as to the actual number and size of firms exporting and to where, and facilitate studies on origin of exports by States or other geographical areas. It will also facilitate the Bureau of Labor Statistics task of developing and maintaining export price indexes. It is proposed that exporters will use the Employer Identification Number (EIN) assigned by the Internal Revenue Service or, if the exporter has no EIN, the Exporter's Social Security Number. The proposal to raise the minimum value requirement for the filing of Shipper's Export Declarations from the present level of \$251 to a new level of \$501, if implemented, is expected to reduce the number of required Shipper's Export Declarations by slightly more than one million documents per year. The proposed increase in the value limit is expected to raise the share of exempted shipments to about 1.5 percent of the overall value of exports in 1979. While there will be some loss of statistical detail at the more detailed levels (i.e., commodity by country, commodity by country by district, etc.), the benefits accruing to both the public and Census by the reduction in the number of Shipper's Export Declarations required to be filed and processed outweigh the anticipated loss in statistical detail. Since exporters will be using identification numbers already assigned, the requirement for an identification number imposes only a minimal burden on the reporting public that is more than offset by the anticipated increase in reliability of published export statistics and the other benefits mentioned above. Raising the value exemption from Shipper's Export Declaration filing requirements to \$500 is a change which relieves documentation burdens. However, it was decided that both these changes should be published as a Notice of Proposed Rule Making to allow interested persons the opportunity to make their views

known. Accordingly, interested persons have until March 9, 1979, to present written data, views and arguments as they may desire to the Director, Bureau of the Census, Washington, D.C. 20233.

To effect these changes in reporting requirements, it is proposed to amend the Foreign Trade Statistics Regulations (15 CFR Part 30) as set forth below.

1. Section 30.7(d) is amended to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

(d) *Exporter.* In general, the exporter named on the Shipper's Export Declaration shall be the principal or seller in the export transaction. For exports moving under validated license, the exporter named on the Shipper's Export Declaration shall be the licensee named on the validated export license. Exporters (or their agents) shall insert, immediately following the name of the exporter, the exporter's Internal Revenue Service Employer Identification Number (EIN), or if no Internal Revenue Service EIN has been assigned, the exporter's Social Security Number. If neither an Internal Revenue Service EIN nor a Social Security Number has been assigned, "No EIN or SS Number" should be inserted immediately following the name of the exporter in item 3. Exporters with export operations in more than one location utilizing the same EIN should identify the particular location by a two character suffix code, immediately following the EIN or Social Security Number. For exporters who are already using a suffix identification in connection with Customs import requirements, the same suffix shall be used as the EIN suffix on the Shipper's Export Declaration. Otherwise, any two character suffix may be used, such as "MI" to designate a location in Michigan, "CA" for California, etc. The address of the exporter (number, street, place, state) shall also be shown. (On Form 7513, if an authorized agent is representing the exporter, the name of the exporter as defined herein should be shown on the line labeled "For account of" where "Principal or seller" is indicated below the line on the form.)

2. Section 30.54(a)(2) is amended to read as follows:

§ 30.54 Special exemptions for mail shipments.

- (a) * * *
- (1) * * *
- (2) The shipment is valued \$500 or under.

3. Section 30.55(h) is amended by changing "\$250" wherever it appears in this section to "\$500," so that as amended, § 30.55(h) now reads as follows:

§ 30.55 Miscellaneous exemptions.

(h) Shipments (except shipments requiring a validated export license) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries included in country groups, Q, S, W, Y, and Z, as defined in the Export Administration Regulations of the Office of Export Administration (15 CFR Parts 368-399),⁵ where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to one importer is \$500 or under: *Provided, however,* That this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on \$500-and-under shipments.

(Title 13, United States Code, sec. 302; and 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765)

Dated: December 18, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

I concur: January 15, 1979.

RICHARD J. DAVIS,
Assistant Secretary,
Department of the Treasury.

IFR Doc. 79-4151 Filed 2-6-79; 8:45 am

[1505-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

IFile No. 792 3014J

WOODLAND MOBILE HOMES, INC., ET AL

Consent Agreement with Analysis To Aid
Public Comment

Correction

In FR Doc. 79-2997, appearing at page 5677 in the issue of Monday, January 29, 1979, make the following changes on page 5678.

1. The third word in the second line of column two, now reading "an", should read, "as".

2. The sixth word in the fifth line of paragraph 7., column 2, now reading "complaints", should read "compliance".

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 3, 157]

[Docket No. RM79-18]

CERTIFICATION OF PIPELINE TRANSPORTATION AGREEMENTS FOR CERTAIN HIGH-PRIORITY USES

Proposed Procedures

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule.

SUMMARY: The Federal Energy Regulatory Commission gives notice of a proposal to implement Section 608 of the Public Utilities Regulatory Policies Act of 1978. The rule establishes procedures for the certification of transportation of natural gas purchased by agricultural or other high-priority users directly from producers.

DATES: Written comments by March 12, 1979.

ADDRESSES: All filings should reference Docket No. RM79-18 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Robert C. Platt or Philip Yates, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-0161.

I. INTRODUCTION

On November 9, 1978, the Natural Gas Policy Act of 1978 (NGPA), Pub. L. 96-621, and the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, were enacted. Section 401 of the NGPA upgrades the curtailment priorities of schools, hospitals and essential agriculture users. Section 608 of PURPA adds Section 7(c)(2) to the Natural Gas Act to provide for the transportation of natural gas sold by a producer to an eligible user or produced and consumed by an eligible user (hereinafter referred to as "direct sale gas"). This proposed rule implements, in part, the direct sale authority of PURPA section 608, in conformance with the curtailment policies expressed in section 401 of the NGPA.

This rule reflects four important features of the new regulatory system created by the National Energy Act. First, the former interstate and intrastate markets have been merged. The unification of the natural gas supply market reduces the former problem of

attracting gas supplies to the markets served with interstate pipeline system-supply gas. The intent of the new legislation is to preserve access by pipelines to their long-standing sources of supply.

Second, section 608 of PURPA provides an additional basis for the Commission to certificate transportation of direct sale gas. The proposed rule would satisfy the rulemaking envisioned by section 608 with respect to only certain categories of customers, i.e., agricultural and designated high-priority users. However, as will be discussed later, the Commission sees this program as a possible model for other actions implementing section 608 and requests comments and suggestions regarding expansion of this program.

Third, the NGPA substitutes a system of ceiling prices (maximum lawful prices) for the former cost-based, just and reasonable pricing system under the Natural Gas Act. Consequently, the Commission need not review the price of the direct sale gas when it evaluates transportation certificate applications under the proposed rule.

Fourth, Title IV of the NGPA reorders curtailment priorities. Although not specifically mandated by the statute, the Commission believes that the Congressional expression of public policy in section 401 of the NGPA concerning essential agricultural uses and other high-priority uses should be reflected in the Commission's direct sale programs as well.

This proposed rule is one of three rules proposed to carry out the Commission's implementation responsibilities with respect to section 401 of the NGPA. The other two rules (the interim and permanent rules) would implement the NGPA with respect to those natural gas uses now provided for within existing pipeline curtailment plans.¹ This proposed rule would complete these rules and complete the FERC implementation program by providing access to natural gas supplies for those agricultural and high-priority uses without access to pipeline-supply gas.

The proposed direct sale program for agriculture and other high-priority uses, taken with the other two rules, seeks to harmonize some potentially inconsistent aspects of section 401 of the NGPA. On the one hand, section 401 expresses Congress' concern with ensuring adequate supplies of natural gas " . . . to meet the requirements of full food and fiber production." On the other hand, the statute and accompanying Joint Statement of Man-

agers convey a clear Congressional intent to minimize the extent to which present curtailment plans will need to be reformulated to implement this section.

" . . . For purposes of implementing this section, the Commission is instructed to reopen curtailment plans that are already in effect under the Natural Gas Act only to the extent necessary to adjust those plans to bring them into conformity with the new curtailment priority schedule. The conferees were concerned that these changes not burden the Commission with lengthy proceedings which might throw existing curtailment plans into disarray. Therefore, the conference agreement includes the term 'to the maximum extent practicable' to assure that the Commission has the necessary flexibility in implementing any changes. For example, the conferees do not intend the reopening of curtailment plans for this limited purpose to result in adoption of a new base for curtailment purposes."²

Commentators in some of the rule-makings pursuant to section 401 of the NGPA have contended that the term "full food and fiber" requires the modification of existing curtailment plans to accommodate both new loads of existing customers as well as new customers. Other commentators have asserted that interpreting section 401 to include load growth would almost certainly require that the base period data of every affected plan be revised, in direct contravention of the instructions by Congress to avoid disruptive changes to the base periods of curtailment plans.

In addition, were load growth for agriculture to be permitted, it seems logical to also permit load growth for the other uses designated by section 401 as higher in priority than essential agricultural uses. Thus, permitting access to interstate pipeline system-supply gas by all new and expanded uses of high-priority consumers designated in section 401 could require precisely the kind of reopening of all existing pipeline curtailment plans that Congress sought to avoid.

Including the proposed direct sales program for agriculture and other high-priority uses as one component in section 401 implementation program is one means of meeting the joint Congressional objectives of assuring that all agricultural uses are given access to natural gas while avoiding the need to roll base periods or otherwise cause major disruptions. Unlike deliveries from pipeline system supply, which are subject to curtailment plans and which are generally based upon historic use, volumes delivered under a direct sale contract are not subject to curtailment and need not be measured against historic use. Hence, a direct sales program does not force the re-

¹Docket No. RM79-13, Interim Regulations For the Implementation of Section 401, January 10, 1979; RM79-15, Regulation For the Implementation of Section 401, January 12, 1979.

²H. Report No. 95-1752, 95th Cong. 2d Sess. 113 (1978). See also H. Report No. 95-1750, 95th Cong. 2d Sess. 113 (1978).

opening of existing curtailment plans. In addition, because the pipelines' service obligations to existing customers are not placed in issue, new growth of eligible direct sale users can be accommodated without resolving competing claims of existing and future customers. Eligibility for participation in the proposed direct sale program is reserved for certain high-priority customers. The program therefore fits the Commission's overall curtailment policy.

It has been correctly pointed out in other section 401 rulemakings that a direct sales program may give access to natural gas but it does not give access to pipeline system-supply gas at a rolled-in price. The latter type of access is, of course, more economically beneficial than purchasing gas at current market prices. The NGPA is clear on the need to provide adequate access to natural gas for agriculture.³ As now envisioned, section 401 would be implemented so that those uses covered by pipeline curtailment plans would have assured access to pipeline system supplies at rolled-in prices and the other high-priority uses would obtain access at current market prices.

The proposed rule implements only a part of the Commission's new authority under section 608 of PURPA and is fashioned solely upon the specific statutory groundwork of section 401. The Commission is cognizant of its responsibility to implement fully section 608 of PURPA. The program proposed by this rulemaking might be expanded to include other categories of consumers. Alternatively, other direct sale programs along the lines of the program proposed here might be developed and tailored for the particular needs of other "high-priority uses". Therefore, the Commission invites comment about possible expansion of the application of its direct sales authority and the terms and eligibility requirements appropriate to any suggested expansion.

The Commission's program for the transportation of direct sales of natural gas between producers and industrial customs established by FPC Order No. 533 and FERC Order No. 2 will not be affected by this proposed rule. Nor does it affect the transportation of natural gas for intrastate pipelines and local distribution companies under NGPA section 311(a).

II. SUMMARY OF PROPOSED REGULATION

The proposed Subpart E of Part 157 supplements the Commission's existing direct sale authorization by allowing the transportation of direct sale gas to certain users that may not cur-

rently be eligible to have natural gas transported under § 2.79 of this chapter.

Proposed § 157.101 indicates the manner in which such direct sale authority is implemented. As presently proposed, Subpart E would permit the transportation of direct sale gas to all essential agricultural users as certified by the Secretary of Agriculture, and all schools, hospitals and similar institutions.

A transportation certificate under section 7(c)(2) of the Natural Gas Act would be issued to the transporting interstate pipeline. However, as indicated in proposed § 157.101(a), either the pipeline or the eligible user on behalf of the pipeline may make application for the certificate. Because the application must include executed contracts, applications cannot be filed until the producer, pipeline and eligible user all consent to the transaction. Since the proposed regulation imposes filing requirements to be satisfied by either the eligible user or the interstate pipeline providing the transportation service, the Commission welcomes comments on the means by which the filing requirements can be shifted from the pipeline to the eligible user to be served.

Applications for a permanent certificate may include application for a temporary transportation certificate. All applications will be processed on an expedited basis. Although section 7(c)(2) of the Natural Gas Act makes no explicit provision for temporary certificates, section 16 of the Natural Gas Act is sufficient legal authority for the Commission to grant such temporary certificates. (See *Hunt Oil Company v. F.P.C.*, 334 F.2d 474 (5 Cir. 1964)).

Temporary certificates may be issued by the Director of the Office of Pipeline and Producer Regulation. This delegation is achieved by including a conforming amendment to § 3.5(f)(1)(iv) of this chapter in this rulemaking. Permanent certificates will be issued by the Commission after notice, an opportunity for protest and, where appropriate, a hearing.

Proposed § 157.102 defines "eligible uses" to include any use certified as an "essential agricultural use" by the Secretary of Agriculture pursuant to section 401(c) of the NGPA, and uses by hospitals and schools or similar institutions as those terms are defined in proposed §§ 281.203(b)(2) and (3) of this chapter. These definitions reflect section 401 of the NGPA. An "eligible user" is defined as anyone who consumes natural gas for an eligible use. Residential and small commercial users have historically been protected from curtailment of service from general pipeline supplies, and NGPA section 311(a) provides these users fur-

ther protection through local distribution companies. As a result, they do not require the access to direct sales provided under the proposed rule. Additionally, the large number of such users in this category could not be accommodated practically under the direct sale program.

The Commission has determined that its policy governing the transportation of direct sale gas should be expanded to include eligible users who are not facing curtailment, to serve new eligible users, and to supply the increased loads of existing eligible users.

A determination under NGPA section 401(b) by the Commission that an essential agricultural user has an available alternate fuel will have no effect upon that user's eligibility to have its direct sale gas transported. Thus, eligible users can utilize direct sale gas to replace other fuels, in whole or in part, to meet its energy requirements.

Congress, in section 401(f), elevated the previously low-priority boiler fuel use by schools and hospitals to high-priority status. Such a change reflects a shift from "end-use" to "end-product" tests in determining curtailment priorities for the uses designated in NGPA section 401. The Department of Agriculture has used an "end-product" test as the sole criterion for defining "essential agricultural uses" in its proposed rule. The Commission has applied this same test in its proposed definition of "eligible uses" for direct sale gas transportation. The Commission invites comment on the extent to which the "end-product" test derived from NGPA section 401 should be supplemented with an "end-use" test in its definition of "eligible uses".

Proposed § 157.102(c) is an exercise of the Commission's rulemaking authority under section 7(c)(2) of the Natural Gas Act. It determines that "high-priority uses" shall include eligible uses as defined in § 157.102.

Proposed § 157.103 sets out the data that must be supplied in an application for direct sale transportation authorization. Proposed § 157.103(d) requires the reporting of any fees paid to a broker for arranging direct sales. Similar reporting requirements are currently being challenged before the Commission; any conclusion reached in that challenge will be reflected in the final version of § 157.103.

Proposed § 157.104 limits the type of gas that qualifies for direct sale transportation by reliance upon the "committed or dedicated" test defined in NGPA section 2(18). This test is designed to prevent the disruption of the offshore supply patterns and to preserve low-cost supplies for interstate system supply. Proposed § 157.104(a) applies the "committed or dedicated"

³There is an important difference of opinion about whether Congress authorized load growth or the general use of gas for boiler fuel purposes.

test as of November 8, 1978. This date is used for applying the test because it is used in pricing determinations under NGPA sections 104, 105, 106 and 109 and in deciding which natural gas is subject to the right of first refusal under NGPA section 315(b). Many producers should have previously applied this test in qualifying for the NGPA interim collection procedures as set forth in § 273.201(c)(2) and § 273.202(d)(1)(v) of this chapter.

The selection of the "committed or dedicated" test is predicated upon an additional policy consideration. NGPA section 315(b)(3) gives interstate pipelines the opportunity to match the terms of a sales agreement "substantially accepted in principle" by a competing buyer. Because "committed or dedicated" gas is ineligible for transportation in the proposed direct sale program, and because section 315(b)(3) applies *only* to gas which is "committed or dedicated", the test prevents the proposed direct sales program from affecting the contract terms available to interstate pipelines under section 315(b)(3).

An eligible user seeking to determine whether particular gas reserves qualify for the proposed direct sale program must consider the contractual and abandonment obligations attached to the natural gas in addition to the test proposed in § 157.104 test.

The Commission has considered other eligibility tests, such as basing eligibility on certain NGPA price categories or making *all* gas supplies eligible. The Commission invites comment on these and other eligibility tests.

Should an applicant wish to transport direct sale gas not eligible for transportation under proposed § 157.104(a), proposed paragraph (b) authorizes a request for a waiver of the § 157.104(a) requirement. For example, the Commission could consider waivers for "committed or dedicated" gas classified under NGPA section 107, even though such natural gas does not qualify under proposed § 157.104(a).

Proposed § 157.105 establishes general conditions that are automatically incorporated into any certificates issued under the proposed rule.

The proposed maximum term for the certificate is five years. The five-year term reflects several considerations. First, comments received during the Commission's consideration of 18 CFR 2.79 indicate that more than two years are required to attract many of the potential sources of new gas supplies. Second, users served by this program do not require more frequent recertification, as their progress toward conversion to alternate fuels is not a consideration under this program. Third, a number of optimistic supply projections have recently been put forward and, if correct, could pro-

vide a basis for extending the lengths of certificates. On the other hand, natural gas production is in an evident period of transition and uncertainty. The public interest would not appear to be served by long-term supply commitments, at this time. The Commission seeks comments on the appropriate length of certificates attendant to direct sales.

The Commission proposes to entertain requests for a ten-year term in applications where the users will develop and produce their own reserves. However, the ten-year term will not be available to eligible users who merely acquire reserves-in-place. This longer certificate term is intended to provide eligible users an incentive to develop new natural gas supplies. Again, the Commission solicits views.

Under proposed paragraph (b), a pipeline may apply for a renewal certificate. Such reapplication will be reviewed *de novo*. Thus, an eligible user who enters into a contract for the purchase of direct sale gas for a period of more than five years does so at its own risk. Proposed paragraph (c) provides a six-month grace period to permit delivery of volumes beyond the end of the certificate's term if the producer contract includes a take-or-pay provision.

Proposed § 157.105(d) requires an acceptance of the certificate to be filed only by the interstate pipeline company. The eligible user, the producer, and any nonjurisdictional transporter of the direct sale gas are deemed to consent to the transportation certificate through their execution of the contracts filed with the application. Under proposed paragraph (e) if the gas is diverted to uses other than the eligible uses, the certificate authorization ceases and any further deliveries by the pipeline would be in violation of the Natural Gas Act. While interstate pipelines cannot completely monitor the end-uses of their customers, the sanctions of Natural Gas Act section 21 will apply to any pipeline which willfully and knowingly continues to transport direct sale gas to a customer who has diverted gas from eligible uses.

Proposed paragraph (f) requires the eligible user to file an annual report within 60 days of the anniversary of the issue date of the certificate. The report will deter possible diversion of gas from eligible uses.

Proposed paragraph (g) requires the interstate and intrastate pipelines transporting direct sale gas to use the same rate methodology that applies to transportation under section 311(a) of the NGPA. This rate methodology is also used in the recently promulgated emergency purchase regulations (Subpart C of Part 157).

The proposed rule does not require the transportation service to be subject to interruptions prompted by the needs of the pipeline's higher priority customers. The jurisdictional consequences of the Natural Gas Act precluded such a condition from being imposed upon the Commission's previous direct sales program. Because the enactment of the NGPA has insulated producers of eligible supplies from possible Natural Gas Act jurisdiction, the Commission invites comments on any appropriate circumstances for interruption of service.

III. WRITTEN COMMENTS

Interested persons are invited to submit written comments on the proposed regulations to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM79-18 on the outside of the envelope and on all documents submitted to the Commission. In order that the Commission be able to take into account as many comments as possible, the Commission requests that persons submitting comments assist in three ways. First, persons should identify specifically the section they are addressing. Second, comment should clearly state whether they involve technical, policy or legal matters. Finally, where comments urge a different approach from one presented, specific alternative language should be proposed to the extent possible.

Fifteen (15) copies should be submitted. All comments and related information received by the Commission by March 12, 1979, will be considered prior to the promulgation of final regulations.

The Commission intends to allow an opportunity for the oral presentation of data views and arguments. These proceedings will be held at times and places, to be announced.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.* Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Natural Gas Policy Act of 1978, Pub. L. 95-621, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 43 FR 46267).

In consideration of the foregoing, it is proposed to amend Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

KENNETH F. PLUMB,
Secretary.

Section 3.5(f) of Subchapter A, of Chapter I, Title 18, Code of Federal Regulations, is amended to read as follows:

§ 3.5 Delegations of final authority.

The Commission authorizes:

(f) The Director of the Office of Pipeline and Producer Regulation or in the Director's absence, the Director's designee to:

(1) Pass upon the following types of applications or amendments to applications: *Provided*, That no formal opposition to the applications or amendments is timely filed with the Commission.

(iv) Applications for temporary certificates for the transportation of natural gas to end-users, pursuant to § 2.79 or § 157.101 of this chapter.

1. Subchapter E is amended by designating § 157.5 through 157.22 as Subpart A—Applications for certificates of public convenience and necessity and for orders permitting and approving abandonment under section 7 of the Natural Gas Act, as amended, concerning any operation, sales service, construction, extension, acquisition or abandonment and § 157.23 through 157.42 as Subpart B—Filings by producers and gatherers of natural gas which are also natural gas companies.

Subpart A—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act, As Amended, Concerning Any Operation, Sales Service, Construction, Extension, Acquisition or Abandonment

§§ 157.5 through 157.22 [Redesignated as Subpart A]

Subpart B—Filings by Producers and Gatherers of Natural Gas Which Are Also Natural Gas Companies

§§ 157.23 through 157.42 [Redesignated as Subpart B]

2. Subchapter E is further amended by adding a new Subpart E to read as follows:

Subpart E—Transportation Certificates Under Section 7(c)(2) of the Natural Gas Act

Sec.

157.100 Applicability.

157.101 General rule.

157.102 Eligible uses.

157.103 Application requirements.

157.104 Eligible gas reserves.

157.105 General conditions.

AUTHORITY: Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.* Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Natural Gas Policy Act of 1978, Pub. L. 95-621, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 43 FR 46267.

Subpart E—Transportation Certificates Under Section 7(c)(2) of the Natural Gas Act

§ 157.100 Applicability.

This subpart implements section 7(c)(2) of the Natural Gas Act and applies to transportation certificates of public convenience and necessity for direct sales of natural gas to certain high-priority users.

§ 157.101 General rule.

(a) *Applications.* Any interstate pipeline, or eligible user on behalf of an interstate pipeline, may file an application as described in § 157.103 for transportation to serve eligible uses as defined in § 157.102.

(b) *Temporary certificates.* Any such application may include a request to be treated also as an application for a temporary certificate and shall be processed by the Commission staff on an expedited basis.

(1) If the application for a temporary transportation certificate is sufficient on its face, a temporary transportation certificate may be issued by the Director of the Office of Pipeline and Producer Regulation pursuant to his authority under § 3.5(f)(1)(iv) of this chapter.

(2) The pipeline may, within 30 days of the date of issuance, file in writing its acceptance or rejection of the temporary certificate. If no acceptance or rejection has been filed within the 30 days, the temporary certificate shall be deemed to have been accepted and shall be effective on the issue date of the order granting such temporary certificate, or such other date prescribed by the Commission.

157.102 Eligible uses.

(a) For the purposes of this subpart, the term "eligible uses" means:

(1) Any use of natural gas certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" under section 401(c) of the Natural Gas Policy Act of 1978; or

(2) Any use of natural gas by a person who uses natural gas in a hospital or school or similar institution as defined in § 281.203(b) (2) and (3) of this chapter.

(b) An "eligible user" is any person who consumes natural gas for an eligible use.

(c) These eligible uses are "high-priority uses" within the meaning of section 7(c)(2) of the Natural Gas Act.

§ 157.103 Application requirements.

All applications pursuant to this subpart must:

(a) Indicate volumes to be transported under the proposed certificate on a peak day, average day and annual basis;

(b) Include a statement by the pipeline that it has capacity sufficient to

perform the transportation service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply;

(c) Indicate the impact of the proposed transportation on the pipeline's ability to provide systemwide deliveries for requirements defined in § 2.78(a)(1)(i) of this chapter;

(d) Provide a copy of the proposed transportation agreement, indicating the proposed transportation rate together with a breakdown and justification of the proposed rate level to the extent indicated in § 284.106 of this chapter for interstate pipelines or § 284.126 of this chapter for intrastate pipelines;

(e) Include a statement by the distributor that it has capacity sufficient to perform the transportation service without detriment or disadvantage to its other customers.

(f) Describe any facilities that will be constructed in order to provide the services, as well as any other facilities that will be utilized, and specify their location. For purposes of this paragraph, there is no requirement that omission of other filing requirements be justified. For purposes of this paragraph, the following provisions are waived:

(1) 18 CFR 157.13—Form of exhibits to be attached to applications;

(2) 18 CFR 157.14—Exhibits;

(3) 18 CFR Part 159—Fees and annual charges under the Natural Gas Act;

(4) 18 CFR Part 201—Uniform system of accounts for natural gas companies; and

(5) 18 CFR Part 260—Statements and reports (schedules).

(g) Indicate that the proposed end-users of such consumption are eligible uses;

(h) Indicate the total end-use requirements profile for natural gas at the location where the transported natural gas will be used;

(i) Provide a copy of the gas purchase contract with the producer underlying the proposed transportation;

(j) Provide a certified copy, if one has been obtained, of any currently effective determination by a jurisdictional agency under section 503 of the Natural Gas Policy Act of 1978 and Part 274 of this chapter applicable to the natural gas to be transported;

(k) File an affidavit that includes the well number or numbers from which the natural gas will be produced, and either state that the natural gas meets the eligibility requirements of § 157.104, or make application for waiver of such requirements.

(l) If an intermediary participates in the transaction between the eligible user and the producer and charges a fee, indicate the amount of the fee

and terms of payment and the intermediary's affiliation, if any, with the producer and/or pipeline;

(m) If either the producer or the eligible user assumes the cost of the construction of any gathering facilities in order to consummate the purchase, provide the cost, terms of payment, ownership and date of construction of the facilities.

§ 157.104 Eligible gas reserves.

(a) *Eligibility test.* No certificate issued under this subpart may authorize the transportation of natural gas which was committed or dedicated, as defined in section 2(18) of the Natural Gas Policy Act of 1978, on November 8, 1978.

(b) *Waiver.* A waiver of the requirement of paragraph (a) may be granted by the Commission upon a showing that such waiver is in the public interest.

§ 157.105 General conditions.

(a) *Term.* (1) Transportation certificates under this subpart may be issued for a term of up to 5 years.

(2) If the natural gas reserves are owned and developed by an eligible user, as determined by the Commission, a certificate may be issued under this subpart for a term of up to 10 years upon a showing that such longer term is necessary to permit the economical development of the reserves.

(b) *Renewal.* Certificates issued under this subpart may be renewed upon reapplication, within 12 months of its expiration.

(c) *Extension of term for take-or-pay users.* If an eligible user is unable to receive natural gas supplies for which it has paid under a take-or-pay provision in the underlying sales contract, the transporting pipelines may file a request for a six-month extension of the certificate authorization. The request shall include a statement of the undelivered volumes and the time necessary to complete delivery thereof. Upon receipt of a letter from the Secretary of the Commission acknowledging a filing for such purposes, the requested extension shall be deemed approved.

(d) *Acceptance of certificate.* Except as provided in subparagraphs (1) and (2) of this paragraph, the certificate shall be void and without force or effect unless accepted in writing by the pipeline within 30 days from the issue date of the order issuing such certificate.

(1) When an application for rehearing of such order is filed in accordance with section 19 of the Natural Gas Act, the acceptance shall be filed within 30 days from the date on which the application for rehearing is denied or deemed to have been denied.

(2) When a petition for review is filed in accordance with the provisions of section 19 of the Natural Gas Act, acceptance shall be filed within 30 days after the final judicial review.

(e) *Termination.* The certificate issued to the pipeline is not transferrable in any manner and shall be effective only so long as the natural gas is consumed for eligible uses and the pipeline continues the operations authorized by the order issuing such certificate and in accordance with the provisions of the Natural Gas Act, as well as the applicable rules, regulations, and orders of the Commission.

(f) *Annual filing.* The eligible user shall file report, within 60 days of the anniversary of issue date of the certificate, containing:

(1) The total amount of natural gas consumed during the preceding 12 month period,

(2) The end-use of such amounts,

(3) The amount of natural gas consumed from other sources during the certificate period,

(4) The end-use of the natural gas from those other sources together with a list of those other sources, and

(5) The average delivered cost per Mcf paid, itemized by amounts paid to:

(i) The producer,

(ii) Each pipeline and distributor involved in transporting the natural gas, and

(iii) Any other parties.

(g) *Rates and charges.* The rates for transportation by any interstate or intrastate pipelines will be charged in accordance with Part 284 of this chapter.

[FR Doc. 79-4249 Filed 2-6-79; 8:45 am]

[6450-01-M]

[18 CFR Parts 35 and 154]

[Docket No. RM79-16]

RESEARCH, DEVELOPMENT AND
DEMONSTRATION (RD&D) PROGRAM

Proposed Regulation Modifying the Time Limit
for Commission Action

AGENCY: Federal Energy Regulatory
Commission.

ACTION: Notice of proposed rulemak-
ing.

SUMMARY: The Commission proposes to amend its regulations to allow 120 days, rather than the current 90 days, for Commission action on an application for advance approval of a research, development and demonstration (RD&D) program. In its Opinion No. 30, issued September 21, 1978, the Commission stated it would issue a notice of proposed rulemaking to obtain comments on a proposal by

California, that the timetable be lengthened.

DATES: Comments due March 15, 1979.

ADDRESS: Office of Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION
CONTACT:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 202-275-4166.

The Federal Energy Regulatory Commission (the Commission) hereby gives notice that it proposes to amend 18 CFR 35.22(d) and § 154.38(d)(5)(iv) as promulgated in Order No. 566¹ to allow 120 days, rather than the current 90 days, for Commission action on an application for advance approval of a research, development and demonstration (RD&D) program. Comments are invited in order to assist the Commission in its review of the proposal. The Commission requests that commentators discuss the merits of the proposal and alternative means, if any, of realizing its purpose.

BACKGROUND

In order to receive advance approval of an RD&D program for an upcoming year, an RD&D organization or a jurisdictional company seeking such approval must submit a five year RD&D plan at least 180 days prior to the commencement of the program. Under the Commission's current regulations, 18 CFR 35.22(d) and § 154.38(d)(5)(iv), the Commission must act upon the RD&D plan within 90 days after it is filed.

On June 30, 1978, the Gas Research Institute (GRI) submitted a proposed research and development program which was approved in Opinion No. 30.² The People of the State of California and the Public Utilities Commission of the State of California (California) filed a comment in the GRI docket criticizing the short timetable imposed as a result of the 90-day deadline. California suggested that the Commission's review of subsequent GRI applications would be "substantially enhanced by a modest amendment of the Commission's regulations" to allow 120 days for Commission action on an application for advance

¹Research, Development and Demonstration; Accounting; Advance Approval of Rate Treatment, Docket No. RM76-17, Order issued June 3, 1977.

²Gas Research Institute, "Opinion and Order Approving the Gas Research Institute's 1979 Research and Development Program", Docket No. RP78-76, issued September 21, 1978.

approval of an RD&D program. In Opinion No. 30 the Commission stated that it would issue a Notice of Proposed Rulemaking to obtain comments on California's proposal.

California, additionally, suggested a schedule for handling GRI's next annual application. Assuming that GRI submits its next application on June 4, 1979 in order to obtain Commission action by October 1, 1979, California proposed that initial comments and a staff report be filed on July 13, 1979. Reply comments by GRI would be filed on August 3, 1979, and further comments would be filed on August 24, 1979.

The procedure adopted in Docket No. RP78-76 for review of GRI's 1979 program was experimental. In Opinion No. 30 the Commission said that in its Notice of Proposed Rulemaking on extending the time limits for action on RD&D plans it would invite parties to include in their comments suggestions on a procedural schedule to be followed in proceedings on GRI's future applications. Accordingly, such comments are now invited. The Commission notes, however, that comments on procedures to be followed in handling GRI's application are solicited through this Notice of Proposed Rulemaking only so that the Commission will have the comments available when it establishes a procedural schedule after GRI files its next annual application in 1979. This is not a rulemaking to establish a particular procedural schedule. The rulemaking proposed herein only revises the 90-day deadline to 120 days.

PUBLIC COMMENT PROCEDURES

Interested persons may participate in this proposed rulemaking by submitting comments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 15, 1979. Each person submitting a comment should include his name and address, identify the notice (Docket No. RM79-16), and give reasons for any recommendations. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of a person to whom communications concerning the proposal may be addressed. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours. Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.

In consideration of the foregoing, it is proposed to amend Part 35 and Part 154, Chapter I of Title 18 of the Code of Federal Regulations, as set forth below.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

§ 35.22 [Amended]

1. Section 35.22 is amended in the first sentence of paragraph (d) by deleting "90" and inserting in lieu thereof "120".

§ 154.38 [Amended]

2. Section 154.38(d)(5) is amended in the first sentence of clause (iv) by deleting "90" and inserting in lieu thereof "120".

[FR Doc. 79-4250 Filed 2-6-79; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

[38 CFR Part 21]

VETERANS EDUCATION

Proposed Regulatory Development

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The following regulatory provisions implement the provisions of the GI Bill Improvement Act of 1977 and adjust the administration of the education loan program. Those regulations that implement the provisions of the GI Bill Improvement Act of 1977 provide for increases in monthly rates and other significant changes in the Veterans Administration educational assistance and vocational rehabilitation programs. Most of the changes are liberalizing. Others are of a minor or technical nature.

The adjustments in the education loan program allow veterans to appeal all decisions regarding entitlement to a loan to the Board of Veterans Appeals. Other adjustments are made to the criteria used to determine the amount of an education loan. These regulations will implement the provisions of the GI Bill Improvement Act of 1977 as well as make the administration of the education loan program more equitable.

DATES: Comments must be received on or before April 9, 1979. In accordance with Pub. L. 95-202, (91 Stat. 1433), it is proposed that § 21.1043 be made effective May 31, 1976; that the amendments to the following sections be made effective the same date: §§ 21.1032, 21.1042, and 21.4501, and that paragraph (a)(3) and the introductory portion of paragraph (d) of § 21.1041, paragraph (c) of § 21.3046, paragraph (b)(2) of § 21.4130, para-

graph (i) of § 21.1045 and that portion of paragraph (b)(2) of § 21.4503 dealing with education loans after a veteran's or eligible person's delimiting date, also be made effective on May 31, 1976.

It is proposed that the amendments to the following sections be made effective October 1, 1977: §§ 21.133, 21.145, 21.3300, 21.3333, 21.4136, 21.4145, 21.4236, and 21.4279; and that the amendments to paragraph (d)(2) of § 21.1041, paragraphs (a) and (b) of § 21.1045, paragraph (a) of § 21.4137, paragraph (a) of § 21.4206, paragraph (c) of § 21.3046, and that portion of paragraph (b)(2) of § 21.4503 that is based upon the increased rates of payment of educational assistance, be made effective the same date.

It is proposed that § 21.4133 and the amendments to §§ 21.4146 and 21.4203 be made effective November 23, 1977, and that the amendment to paragraph (d) of § 21.4206 be made effective the same date.

It is proposed that § 21.4507 be made effective January 1, 1978; that the amendments to §§ 21.3045, 21.4200, 21.4504, 21.4505, and 21.4506 be made effective the same date; and the amendments to paragraph (h) of § 21.1045 and paragraph (c) of § 21.4206 as well as the addition of paragraph (c) to § 21.4502 also be made effective January 1, 1978.

It is proposed that § 21.4154 and the amendments to §§ 21.201, 21.4100, 21.4153, 21.4201, 21.4251, 21.4266, 21.4270 and 21.4277; the amendments to paragraph (f) of § 21.4137 as well as the remainder of the amendments to § 21.4130 be made effective February 1, 1978.

It is proposed that the amendments to § 21.4500, the amendments to paragraph (b) (1) and (4) of § 21.4502 and the amendments to paragraph (b) (3) and (4) of § 21.4503 be made effective August 1, 1978.

It is proposed that the amendments to § 21.3032 and the remainder of the amendments to § 21.3046 be made effective December 1, 1978.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until April 19, 1979.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION:

The proposed regulations contain provisions for an extension of delimiting periods under chapter 34 and 35, title 38, United States Code; rate increases; increased hourly rates for work performed in the work-study program and institutional reporting fee increases.

They contain modified provisions concerning satisfactory progress and conduct, and revised criteria limiting the extent to which moneys for which educational institutions may be held liable can be recovered from the institutions' reporting fees. Amended provisions allowing educational institutions to cash certain checks being held by them; accelerated payment of educational assistance allowance (loan forgiveness) and modified criteria to determine eligibility for an education loan also are included; and veterans are given the opportunity to appeal all determinations concerning their entitlement to an education loan. The proposed regulations also contain revised clock-hour measurement criteria; provisions for increased reimbursement of the expenses of State approving agencies and modified provisions concerning the 2-year operation requirement including a provision to allow the Administrator of Veterans Affairs to waive the requirement in certain instances.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions or objections regarding these documents to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until April 19, 1979. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the above address and room number.

APPROVED: January 26, 1979.

MAX CLELAND,
Administrator.

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. Section 21.133 is revised to read as follows:

§ 21.133 Rates.

Subsistence allowance is payable at the following monthly rates effective October 1, 1977.

Type of training	Monthly rate of subsistence allowance			
	No dependents	1 dependent	2 dependents	Each additional dependent
Institutional:				
Full-time	\$241	\$298	\$351	\$26
3/4 time	181	224	263	19
1/2 time	120	149	176	13
Sheltered workshop, training in the home, independent instructor (full time only)	241	298	351	26
Farm cooperative, apprentice or other on job (OJT) (full time only)	210	254	293	19
Combination (Institutional and OJT) (full time only):				
Institutional 1/2 time or more	241	298	351	26
Institutional less than 1/2 time	210	254	293	19
Cooperative (full time only):				
Institutional full time	241	298	351	26
Business/industry full time	210	254	293	19

¹For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1504(b); Pub. L. 95-202, 91 Stat. 1433)

2. In § 21.145, paragraph (a) is revised to read as follows:

§ 21.145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 31 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services

for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or \$625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will

be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training, he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be completed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or \$2.50 (whichever was the basis for the contract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95-202, 91 Stat. 1433)

(3) Section 21.201 is amended as follows:

(a) By deleting the reference "§ 21.4270 footnote 7" and inserting "§ 21.4270(b) footnote 1" in paragraph (j)(5).

(b) By revising paragraph (j)(1) and (2) as set forth below:

§ 21.201 Types of courses.

(j) *Independent study course leading to a degree.* A course pursued by independent study under the following conditions:

(1) The course is offered by a college or university.

(2) The course leads to or is fully creditable toward a standard college degree.

Subpart B—Veterans' Educational Assistance
Under 38 U.S.C. Chapter 34

§ 21.1021 [Amended]

4. The cross reference following § 21.1021 is changed to read "Measurement of courses." See § 21.4270(a).

5. In § 21.1032, paragraph (d) is added to read as follows:

§ 21.1032 Time limits.

(d) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in § 21.1043 must be received by the Veterans Administration by the latest of the following dates:

(1) November 23, 1978,
(2) One year from the date on which the veteran's original period of eligibility ended,

(3) One year from the date on which the veteran's physical or mental disability ceased to prevent him or her from beginning or resuming the veteran's chosen program of education. (38 U.S.C. 1662)

6. In § 21.1041, paragraphs (a)(3), (d) (introductory portion preceding subparagraph (1)) and (d)(2) are revised to read as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* * * *

(3) The veteran may use his or her entitlement at any time during the 10-year period, including any applicable extension of it, determined under §§ 21.1042 and 21.1043, but in no event shall education or training be afforded a veteran under chapter 34 or 36 after December 31, 1989. It is not required that the entitlement time be used in consecutive months. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(d) *Extension.* The period of entitlement, including the 45-months period, may be extended, but not beyond the delimiting date specified in §§ 21.1042 and 21.1043: (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement ends after more than half of the course has been completed. In a course consisting exclusively of flight training and in a course pursued exclusively by correspondence, the period of entitlement will be extended to the end of the course or for the total additional amount of instruction that \$806 will provide for flight training and \$871 will provide for correspondence train-

ing, whichever is less. (38 U.S.C. 1661; 1677(b); 1786(a); Pub. L. 95-202, 91 Stat. 1433)

7. In § 21.1042, paragraphs (a) and (b) are revised to read as follows:

§ 21.1042 Ending dates of eligibility.

The ending date of eligibility will be the latest of the following dates:

(a) *General.* Except as provided by § 21.1043 no educational assistance will be afforded a veteran later than 10 years after his or her last discharge or release from active duty after January 31, 1955, or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

(b) *Correction of military records.* If the veteran becomes eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other corrective action by competent military authority, educational assistance will not be afforded later than 10 years after the date his or her discharge or dismissal was changed, corrected or modified (except as provided by § 21.1043), or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

8. Section 21.1043 is added to read as follows:

§ 21.1043 Extended period of eligibility.

(a) *General.* A veteran shall, be granted an extension of the applicable delimiting period, as otherwise determined by § 21.1042 provided:

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. It must be clearly established by medical evidence that such a program of education was medically infeasible. A veteran who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(3) The veteran is otherwise eligible for payment of educational assistance for the training pursuant to chapter 34, title 38, United States Code. (38

U.S.C. 1662, Pub. L. 95-202, 91 Stat. 1433)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen:

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.1042, and

(2) Must be on or before the ninetyeth day following the date on which the veteran's application for an extension was approved by the Veterans Administration, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first ordinary term, quarter or semester following the ninetyeth day after the veteran's application for an extension was approved by the Veterans Administration if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.1042, or

(iii) The date the veteran resumed training. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible or

(ii) The veteran's delimiting date as determined by § 21.1042. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(d) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of an extended period of eligibility as determined under this section, the educational assistance allowance will be discontinued effective the

day preceding the end of the extended period of eligibility. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

9. In § 21.1045, paragraphs (a)(2) and (b)(2) are revised and paragraphs (h) and (i) are added so that the revised and added material reads as follows:

§ 21.1045 Entitlement charges.

(a) *Residence courses.* * * *

(2) *Flight training courses; Chapter 34.* A charge against the period of entitlement for a program consisting exclusively of flight training will be made on the basis of 1 month for each \$288 which is paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{4}$, $\frac{1}{2}$ or $\frac{3}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1667(b); Pub. L. 95-202, 91 Stat. 1433)

(b) *Correspondence courses.* * * *

(2) *Other courses.* Except as provided in paragraph (b)(1) of this section, the period of entitlement of any eligible veteran who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each \$175 paid to the veteran as an educational assistance allowance for such course, for contracts entered into before January 1, 1973. For agreements entered into after December 31, 1972, the period of entitlement of any eligible veteran, spouse, or surviving spouse, who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each \$220 paid before September 1, 1974, to the veteran, spouse, or surviving spouse as an educational assistance allowance for such course. For payments made on or after September 1, 1974, the charge will be 1 month for each \$260 paid; for payments made on or after January 1, 1975, the charge will be 1 month for each \$270 paid; for payments made on or after October 1, 1976, the charge will be 1 month for each \$292 paid; and for payments made on or after October 1, 1977, the charge will be 1 month for each \$311 paid. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{4}$, $\frac{1}{2}$ or $\frac{3}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1786(a)(2); Pub. L. 95-202, 91 Stat. 1433)

(h) *Accelerated payment; chapter 34 and chapter 35.* The entitlement of a veteran or eligible person who receives an accelerated payment will be charged at the rate of 1 month for each amount of accelerated payment

(exclusive of the matching payment from the State and-or local governmental unit) equal to the full-time monthly rate payable to the veteran or eligible person under § 21.4136(a) at the time he or she applied for an accelerated payment. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{4}$, $\frac{1}{2}$, or $\frac{3}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

(i) *Education loan after otherwise applicable delimiting date; chapter 34 or chapter 35 spouse or surviving spouse.* A charge will be made against the entitlement of a veteran, spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 month for each month entitlement that would have been used had the veteran, spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{4}$, $\frac{1}{2}$ or $\frac{3}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1662, 1712; Pub. L. 95-202, 91 Stat. 1433)

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

10. In § 21.3032, paragraph (c) is added to read as follows:

§ 21.3032 Time limits.

(c) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility provided by § 21.3046(d) must be received by the Veterans Administration by the later of the following dates:

(1) One year from the date on which the spouse's or surviving spouse's original period of eligibility ended.

(2) One year from the date on which the spouse's or surviving spouse's physical or mental disability ceased to prevent him or her from beginning or resuming a chosen program of education. (38 U.S.C. 1712).

§ 21.3045 [Amended]

11. Section 21.3045 is amended to delete the reference "§ 21.1045(a) through (c) and (e) through (g)" and insert "§ 21.1045(a) through (c) and (e) through (i)."

12. Section 21.3046 is amended as follows:

(a) By deleting "Pub. L. 94-502, 90 Stat. 2383" and inserting "Pub. L. 95-202, 91 Stat. 1433" in paragraph (c)(3).

(b) By revising the introductory text and the introductory text of paragraph (c) preceding subparagraph (1) and adding paragraph (d) so that the revised and added material reads as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraphs (c) and (d) of this section. If eligibility arises before October 24, 1972, educational assistance based on a course of apprenticeship or other on-the-job training, or correspondence approved under the provisions of §§ 21.4256, 21.4261 and 21.4262 will not be afforded later than October 23, 1982 unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section, however, will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse. (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

(c) *Extension to ending date.* Spouse is enrolled and eligibility ceases for a reason specified in paragraph (c)(1), (2), or (3) of this section: extended to end of quarter or semester for schools operating on quarter or semester system, or for schools not operating on quarter or semester system, to end of course or for 12 weeks, whichever is earlier. In a course pursued exclusively by correspondence, the period of eligibility will be extended to the end of the course or for the total additional amount of instruction that \$871 will provide, whichever is less. No extension may exceed maximum entitlement or extend beyond the delimiting date specified in paragraph (a) or (d) of this section, as appropriate. Extension is authorized without regard to whether the midpoint of the quarter, semester or term has been reached. No extension of the period of eligibility will be made when training is pursued in a training establishment as defined in § 21.4200(c). (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

(d) *Extended period of eligibility due to physical or mental disability.* A spouse or surviving spouse shall receive an extended period of eligibility when he or she applies for it and meets the criteria of § 21.1043(a). All other provisions of § 21.1043 concerning commencing dates and length of extended periods of eligibility and discontinuance of educational assistance

also apply to spouses and surviving spouses who qualify for extended periods of eligibility. (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

13. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

(c) Special restorative training may be provided in excess of 45 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment in excess of \$98 per calendar month. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b); 1742; Pub. L. 95-202, 91 Stat. 1433)

14. In § 21.3333, paragraphs (a) and (b) are revised to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate except as provided in paragraph (c) of this section

Course	Monthly rate	Accelerated charges
Special Restorative Training.	\$311	If costs for tuition and fees average in excess of \$98 per month, rate may be increased by such amount in excess of \$98.

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each \$10.40 that the special training allowance exceeds the basic monthly rate of \$311. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less, will be disregarded. Charges will be recorded when the eligible person is entered into training. (38 U.S.C. 1742; Pub. L. 95-202, 91 Stat. 1433)

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35 and 36

15. Section 21.4100 is revised to read as follows:

§ 21.4100 Counseling.

(a) The purpose of counseling is to assist:

(1) In selecting an educational or training objective,

(2) In developing a suitable program of education or training,

(3) In selecting an educational institution or training establishment ap-

propriate for the attainment of the educational or training objective,

(4) In resolving any personal problems which are likely to interfere with successful pursuit of a program,

(5) In selecting an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances. (38 U.S.C. 1663, 1720; Pub. L. 95-202, 91 Stat. 1433)

(b) Counseling not required by other Veterans Administration regulations shall be provided as needed for the purposes identified in paragraph (a) of this section upon the request of the veteran or eligible person. (38 U.S.C. 1663; Pub. L. 95-202, 91 Stat. 1433)

§ 21.4102 [Amended]

16. Section 21.4102 is amended by deleting the words "wife, husband, widow or widower" and inserting "spouse or surviving spouse" in the headnote and the first sentence of paragraph (b).

§ 21.4106 [Amended]

17. Section 21.4106 is amended by deleting the words "Wife, Husband, Widow or Widower" and inserting "Spouse or Surviving Spouse" in the headnote of paragraph (a)(3).

18. In § 21.4130, the introductory text and paragraph (b)(2) are revised to read as follows:

§ 21.4130 Educational assistance allowance.

Educational assistance allowance will be paid at the rate specified in § 21.4136 or 21.4137 while the veteran or eligible person is pursuing a course of education. Except for apprenticeship and on-the-job training programs, no payment will be made based on a course not leading to a standard college degree for excessive absences as determined under § 21.4205(b). (See §§ 21.4136(i) and 21.4137(f) for proportionate reduction where less than 120 hours are completed during a month in apprenticeship and on-the-job training programs). Final payment may be withheld until proof of continued en-

rollment is received and the account adjusted. No payment may be made for training in an apprenticeship or other on-the-job training program in excess of the number of hours approved by the State approving agency; no payment may be made for lessons completed in a correspondence course in excess of the number approved by the State approving agency; and no payment may be made for training in any other type of course which occurs after the additional period, provided in § 21.4277, beyond the length of the course approved by the State approving agency. (38 U.S.C. 1674, 1681; Pub. L. 95-202, 91 Stat. 1433)

(b) The ending date will be the earliest of the following dates:

(2) The ending date of the veteran's eligibility as determined under §§ 21.1041, 21.1042 and 21.1043. (38 U.S.C. 1662(a); Pub. L. 95-202, 91 Stat. 1433)

19. Section 21.4133 is added to read as follows:

§ 21.4133 Notification of withholding or discontinuance.

Any eligible veteran or eligible person whose payments are withheld or discontinued pursuant to § 21.4134 or 21.4135 shall concurrently receive written notice of the withholding or discontinuance from the Veterans Administration. The notice shall state the reasons for the withholding or discontinuance of payments, and shall notify the veteran or eligible person that he or she has a right to a hearing and to present evidence why payments should not be discontinued or withheld. (38 U.S.C. 1790(b); Pub. L. 95-202, 91 Stat. 1433)

In § 21.4136, paragraphs (a) and (c) are revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1977:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	\$311	\$370	\$422	\$26
¾ time	233	277	317	19
½ time	155	185	211	13
Less than ½ but more than ¼ time	155			
¼ time or less	78			
Cooperative, other than farm cooperative (full time only)	251	294	334	19
Apprentice or on-the-job (full time only but see footnote below.)				

Type of courses	Monthly rate			Additional for each additional dependent
	No dependents	1 dependent	2 dependents	
Payment designated training assistance allowance:				
First 6 months.....	226	254	277	12
Second 6 months.....	169	197	221	12
Third 6 months.....	113	141	164	12
Fourth 6 months and succeeding periods.....	56	84	108	12
Correspondence.....	90 per centum of the established charge for number of lessons completed by veteran and serviced by school. Allowance paid quarterly.			
Flight training.....	90 per centum of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay—Allowance paid monthly based on actual flight training received. See § 21.045(a)(2).			
Farm cooperative:				
Full time.....	251	294	334	19
¾ time.....	188	221	251	15
½ time.....	126	147	167	10

* If a veteran under chapter 34 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$156 or \$78 as appropriate per month if the maximum allowance is not initially authorized.

* See paragraph (b) of this section.

* See footnote * of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

* Established charge means that the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before January 1, 1973, will receive 100 percent of the established charges.

(38 U.S.C. 1677, 1682, 1786, 1787; Pub. L. 95-202, 91 Stat. 1433)

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the monthly rate of the cost of the course as specified in paragraph (b) of this section. For the purpose of a course pursued under the provisions of § 21.4235(a)(1) "cost of the course" shall include the cost of books and supplies peculiar to the course which the institution requires similarly circumstanced nonveterans enrolled in the same or a similar course to have. Where there is no same program, the cost of the course will be established by the Veterans Administration based on a report from the State approving agency showing the estimated cost for operation of the program and the anticipated enrollment. Subject to these limitations, the rate will be:

Measurement	Rates
Full time.....	\$311
¾ time.....	233
½ time.....	156
Less than ½, but more than ¼ time.....	156
¼ time or less.....	78

(38 U.S.C. 1682; Pub. L. 95-202, 91 Stat. 1433)

21. Section 21.4137 is amended as follows:

(a) By deleting "§ 21.4270" and inserting "§ 21.4270(b)" in the parenthetical note following paragraph (f).

(b) By revising paragraph (a) to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. ch. 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates:

Type of courses	Monthly rate effective October 1, 1977
Institutional	
Full time.....	\$311
¾ time.....	233
½ time.....	156
Less than ½ but more than ¼ time *.	156
¼ time or less *	78
Cooperative, other than farm cooperative (full time only).....	251
Apprentice or on-job (full time only but see footnote * below.) Payment designated training assistance allowance:	
First 6 months.....	226
Second 6 months.....	169
Third 6 months.....	113
Fourth 6 months and succeeding periods.....	56
Farm cooperative:	
Full time.....	251
¾ time.....	188
½ time.....	126
Correspondence.....	90 per centum of the established charge for number of lessons completed by eligible spouse or surviving spouse and serviced by the school. Allowance paid quarterly.

* See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

* Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State

(38 U.S.C. 1682, 1732, 1786, 1787; Pub. L. 95-202, 91 Stat. 1433)

§ 21.4138 [Amended]

22. Section 21.4138 is amended by deleting the cross reference following paragraph (f).

23. In § 21.4145, paragraph (a) is revised to read as follows:

§ 21.4145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or \$625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be completed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or \$2.50 (whichever was the basis for the con-

approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser.

* If an eligible person under chapter 35 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$156 or \$78 as appropriate per month if the maximum allowance is not initially authorized. (38 U.S.C. 1732(c)(3); Pub. L. 95-202, 91 Stat. 1433)

tract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95-202, 91 Stat. 1433)

24. In § 21.4146, paragraph (f) is added to read as follows:

§ 21.4146. Assignments of benefits prohibited.

(f) *Savings clause.* Notwithstanding any other provision of this section the Director of the Veterans Administration field station of jurisdiction may authorize the educational institution to negotiate educational assistance checks payable to the veteran or eligible person under a power of attorney executed by the veteran or eligible person prior to December 1, 1976, authorizing the school to negotiate the check, provided that the following criteria are met:

(1) The veteran or eligible person owes the full proceeds of the check to the educational institution for tuition and fees;

(2) The educational institution is able to establish that it will face undue financial hardship if it is unable to negotiate the check; and

(3) The check is for training:

(i) Received by the veteran or eligible person for a course offered by the educational institution under provisions of subchapter VI of chapter 34, title 38, United States Code, for Pre-discharge Education Program training, or at a location not in a State under provisions of section 1676, title 38, United States Code, and the course was begun by the veteran or the eligible person prior to December 1, 1976, and completed not later than June 30, 1977; or

(ii) By an accredited correspondence school received by the veteran or eligible person while residing in a State, and represents payment for lessons completed under section 1786, title 38, United States Code, that were serviced by the school prior to January 1, 1977. (Sec. 305(c)(1), Pub. L. 95-202, 91 Stat. 1433)

25. Section 21.4153 is amended as follows:

(a) By changing the citation following paragraph (c)(4) to read "(38 U.S.C. 1774; Pub. L. 95-202, 91 Stat. 1433)".

(b) By revising paragraph (c)(3) to read as follows:

§ 21.4153 Reimbursement of expenses.

(c) *Reimbursable expenses.* * * *

(3) *Administrative expenses.* An allowance for administrative expenses for which payment may be authorized

will be determined in accordance with the formula contained in this subparagraph. Salary cost includes basic salary plus fringe benefits such as Social Security, retirement, and health, accident or life insurance which is provided all similarly circumstanced State employees.

Total salary cost reimbursable	Allowable for administrative expense
\$5,000 or less.....	\$630.
Over \$5,000 but not exceeding \$10,000.	\$1,134.
Over \$10,000 but not exceeding \$35,000.	\$1,134 for the first \$10,000 plus \$1,050 for each additional \$5,000 or fraction thereof.
Over \$35,000 but not exceeding \$40,000.	\$6,862.
Over \$40,000 but not exceeding \$75,000.	\$6,862 for the first \$40,000 plus \$908 for each additional \$5,000 or fraction thereof.
Over \$75,000 but not exceeding \$80,000.	\$13,608.
Over \$80,000	\$13,608 for the first \$80,000 plus \$793 for each additional \$5,000 or fraction thereof.

26. Section 21.4154 is added to read as follows:

§ 21.4154 Report of activities.

(a) *General.* Each State approving agency entering into a contract or agreement pursuant to § 21.4153 shall submit a report of activities to the Veterans Administration on September 30, 1978 for the preceding 12-month period and each month thereafter.

(b) *Content of the report.* The report shall be in the form prescribed by the Administrator and shall detail the activities of the State approving agency under the agreement or contract during the preceding month as well as from the beginning of the fiscal year through the end of that month. Each report shall describe the services performed and the determinations made in supervising and ascertaining the qualifications of educational institutions in connection with the programs of the Veterans Administration. The content of the report shall include as a minimum:

(1) A report of the number of active schools and establishments with approved courses in the jurisdiction of the State approving agency;

(2) The actions taken by the State approving agency on applications for approval of course revisions;

(3) The actions taken by the State approving agency on applications for approval of new courses made by schools which previously have had courses approved;

(4) The actions taken by the State approving agency on applications for approval of new courses made by

schools which have not had any courses approved previously;

(5) The number of inspections, approval and supervisory visits to schools made by the State approving agency;

(6) The actions taken by the State approving agency with respect to schools and establishments which the State approving agency found to have deficiencies;

(7) The actions taken by the State approving agency with respect to schools and establishments which the Veterans Administration found to have deficiencies;

(8) The actions taken by the State approving agency in promoting jobs for veterans programs; and

(9) The number of man-months used by the State approving agency pursuant to the contract. (38 U.S.C. 1774; Pub. L. 95-202, 91 Stat. 1433)

27. In § 21.4200, paragraph (n) is added to read as follows:

§ 21.4200 Definitions.

(n) *School term.* The term means for the purpose of § 21.4506:

(1) In the case of an institution of higher learning operating on a quarter system, three consecutive quarters within an ordinary school year;

(2) In the case of an institution of higher learning operating on a semester system, two consecutive semesters within an ordinary school year; or

(3) In the case of an educational institution not an institution of higher learning, or in the case of an institution of higher learning not operating on a quarter or semester system a period of 9 to 11 months provided the program of education is divided into segments and at least one segment is completed prior to or during the 9- to 11-month period. (38 U.S.C. 1682A(e); Pub. L. 95-202, 91 Stat. 1433)

28. Section 21.4201 is revised to read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General.* Except as otherwise provided in this section no enrollment in any course may be approved for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution, the Veterans Administration pursuant to title 38, United States Code, and/or grants of any other Federal agency. This restriction may be waived in whole or part.

(b) *Affected schools.* The requirements of paragraph (a) of this section apply to all courses not otherwise exempt or waived offered by all educa-

tional institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

(c) *Affected courses.* The following courses or programs are exempt from the requirements of paragraph (a) of this section:

(1) Any farm cooperative course;
(2) Any course of Special Assistance for the Educationally Disadvantaged, offered pursuant to subchapter V, chapter 34, title 38, United States Code;

(3) Any approved course offered under contract with the Department of Defense which is on or immediately adjacent to a military base, which has been approved by the State approving agency of the State where the base is located or the State of the parent school if the course is offered overseas, and which either:

(i) Is available only to military personnel and their dependents, or

(ii) Is available only to military personnel, their dependents, and civilian employees of the base located in a State, or

(iii) Is available only to persons authorized by the base commander to attend the course provided the base is located outside the United States;

(4) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as "nonappropriated sundry fund activities" which are governmental instrumentalities;

(5) Any course if the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution) except that the Director of the Veterans Administration field station of jurisdiction shall apply the provisions of paragraph (a) of this section if he or she has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course.

(d) *Application for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(5) of this section. To obtain an exemption as stated in paragraph (c)(5) of this section schools must submit reports as required in paragraph (f)(1) of this section.

(e) *Computing the 85-15 percent ratio—(1) Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this

section, an 85-15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions must have an 85-15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(i) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(a) General 2-year curricula at 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2-year courses (i.e., AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(b) Students attending 4-year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85-15 percent computation must be made for each specific curriculum, i.e., BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.

(ii) NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded voca-

tional objective, each must meet the 85-15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Branch or extension courses will be computed separately from courses at the parent facility. Courses offered on a full- and part-time basis which are identical in length and content will be combined for computing the ratio.

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section the following students will be considered to be nonsupported provided they are not receiving educational assistance from the Veterans Administration:

(i) Students who are not veterans, and are not in receipt of Federal or institutional aid.

(ii) All graduate students in receipt of any Federal aid (other than Veterans Administration benefits) and any institutional aid.

(iii) Students in receipt of all types of Federal aid (other than Veterans Administration benefits). However, BEOG (Basic Educational Opportunity Grant) and SEOG (Supplementary Educational Opportunity Grant) recipients shall be counted as supported after notice to the school by the Veterans Administration.

(iv) Undergraduate and noncollege degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike, and the students do not have to be counted as supported pursuant to paragraph (e)(2)(iii) of this section.

(3) *Calculation.* (i) To determine if the requirement of paragraph (a) of this section has been met for all courses except flight courses the full-time equivalent, nonsupported students as defined by paragraph (e)(2) of this section will be compared to the full-time equivalent students enrolled in the course. If the full-time equivalent, nonsupported students do not equal at least 15 percent of the total full-time enrollment, the 85-15 percent requirement has not been met for the course. If a non-Veterans Administration student in a correspondence course has not completed a lesson nor made a payment toward the cost of the course during the 6-month period immediately prior to the computation, the student will not be counted in computing the 85-15 percent ratio.

(ii) The 85-15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged

to all students in the same period. All courses offered at a flight school which are approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the purpose of making this computation. Similarly, all courses offered at a flight school which are not approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the purpose of making this computation. Hours of training or tuition charges:

(a) In the private pilot's course shall be excluded;

(b) For students enrolled in courses approved under Part 141, Title 14, Code of Federal Regulations (the Federal Aviation Administration regulations) shall be actual hours of logged instructional flight time or charges; and

(c) For students enrolled in courses not approved under Part 141, Title 14, Code of Federal Regulations such as in courses for navigator or flight engineer, shall include ground training time in addition to actual logged instructional flight time or charges.

(4) *Relief from complete calculations.* If 35 percent or fewer of the students in a course, not otherwise exempt from the provisions of paragraph (a) of this section, offered by an institution of higher learning or non-college degree school receive Veterans Administration educational benefits, the percentage of the school's total enrollment in all courses in all locations receiving BEOG and SEOG totals 85 percent or less the school need make no further calculations. This relief from complete calculations is for application only after the Veterans Administration has notified the school that BEOG and SEOG recipients are considered to be supported students as provided in paragraph (e)(2) of this section.

(f) *Reports.* (1) All calculations needed to support the exemption found in paragraph (c)(5) of this section to the requirements of paragraph (a) of this section must be submitted by a school to the Veterans Administration no later than 30 days after the beginning of the first term for which the school wishes the exemption to apply if the school is organized on a term, quarter or semester basis, or no later than 30 days after the beginning of the first calendar quarter for which the student wishes the exemption to apply if the school is not organized on a term, quarter or semester basis. A school having received an exemption found in paragraph (c)(5) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Veterans Administration assistance:

(i) Unless the Director of the VA field station of jurisdiction has reason to believe that the enrollment of eligible veterans and eligible persons in a specific course may exceed 85 percent of the total enrollment in a specific course, or

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time the procedures contained in paragraph (f)(2) of this section shall apply.

(2) All calculations made pursuant to paragraph (e) (3) and (4) of this section must be submitted by the school to the Veterans Administration no later than 30 days after the beginning of each regular school term (excluding summer sessions) or before the beginning date of the next term, whichever occurs first, if the school is organized on a term, quarter or semester basis. If a school is not organized on a term, quarter or semester basis, reports must be received by the Veterans Administration no later than 30 days after the end of each calendar quarter.

(g) *Effect of the 85-15 percent ratio on processing new enrollments.* (1) The Veterans Administration will process new enrollments of eligible veterans in a course on the basis of the school's submission of the most recent computation showing that either the 85-15 percent ratio is satisfactory or that the course is exempt under paragraph (c)(5) of this section. However, no benefit will be paid when the most recent computation establishes that the course neither has a satisfactory 85-15 percent ratio nor is exempt under paragraph (c)(5) of this section, except for those enrollments which have a beginning date prior to or the same as the date the school completed this computation. If a school fails to submit a timely computation, no benefits will be paid for any enrollment with beginning dates beyond the expiration of the allowable computation period. Enrollments with later beginning dates may be processed only after the school submits a certification either that the proper ratio has been reestablished for the course, or that the course is exempt from the requirement pursuant to paragraph (c)(5) of this section. When a school shows a reestablished 85-15 percent ratio, each new veteran enrollment submitted after reestablishment must be individually computed into the ratio to insure that the 85 percent limitation is not again immediately exceeded. Individu-

al computations will be required until the end of the term for which the ratio was reestablished or until the end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis.

(2) Once a student is properly enrolled in a course either before December 1, 1976 or after November 30, 1976, in a course which either meets the 85-15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85-15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving Veterans Administration education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education and Rehabilitation Service through the Director of the Veterans Administration field station of jurisdiction. A school desiring a waiver of the provisions of paragraph (a) of this section for any other course may apply to the Director of the Veterans Administration field station of jurisdiction.

(1) When applying a school must submit sufficient information to allow the Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge the merits of the request against the criteria shown in this subparagraph. This information and any other pertinent information available to the Veterans Administration shall be considered in relation to these criteria:

(i) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(ii) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Office of Education, if applicable. Otherwise, the school should submit data sufficient to allow the Director, Education and Rehabilitation Service, or the Director of the Veterans Administration field station

of jurisdiction, as appropriate; to judge whether the school is similar to officially classified developing institutions according to the criteria and data categories published, in Part 169, Subpart B, Title 45, Code of Federal Regulations. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(iii) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the Veterans Administration.

(iv) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, results of the 50 percent employment survey for vocational objective courses, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(2) If a school disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the director's recommendation be forwarded to the Director, Education and Rehabilitation Service for administrative review. (38 U.S.C. 1673(d); Pub. L. 95-202, 91 Stat. 1433)

29. In § 21.4203, paragraph (a) is revised to read as follows:

§ 21.4203 Reports by schools; requirements.

(a) *General.* Educational institutions are required to report promptly the entrance, reentrance, change in hours of credit or attendance, interruption and termination of attendance of each veteran or eligible person who is enrolled. Educational institutions are also required to verify attendance of each veteran or eligible person receiving an advance payment, or an education loan. Nothing in this section or in any other section of Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree. (38 U.S.C. 1780(d), 1784, 1785, 1798; Pub. L. 95-202, 91 Stat. 1433)

30. In § 21.4206, paragraphs (a) and (c) are revised and paragraph (d) is added so that the revised and added material reads as follows:

§ 21.4206 Reporting fee.

(a) Except as provided in paragraph (b) of this section, the reporting fee will be computed for each calendar year by multiplying \$7 by the number of eligible veterans and eligible persons enrolled under chapter 34, chapter 35, or chapter 36 on October 31 of that year. (38 U.S.C. 1784(b); Pub. L. 95-202, 91 Stat. 1433)

(c) An additional \$4 will be paid to those institutions which have delivered to the veteran or eligible person at registration the educational assistance check representing an advance payment, or which have delivered educational loan checks in accordance with the provisions of Subpart f. If an institution delivers both an advance payment check and educational loan check(s) to the same veteran or eligible person within 1 calendar year, it shall receive only one additional \$4 fee. In order to receive this fee, the institution shall submit to the Veterans Administration a certification of delivery of each check. If an advance payment check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Veterans Administration. If an education loan check is not delivered within 30 days of the date the educational institution received it, the check shall be returned to the Veterans Administration. (38 U.S.C. 1784, 1798; Pub. L. 95-202, 91 Stat. 1433)

(d) No reporting fee payable to an educational institution under this section shall be subject to offset by the Veterans Administration against any liability of the educational institution for any overpayment which the Veterans Administration has administratively determined to exist unless the liability of the educational institution was not contested by the educational institution or was upheld by a final decree of a court of appropriate jurisdiction. (38 U.S.C. 1784; Pub. L. 95-202, 91 Stat. 1433)

31. In § 21.4236, paragraphs (c) and (d) are revised to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or 21.4137 the cost of such tutorial assistance in an amount not to exceed \$69 per month will be authorized. (38 U.S.C. 1692(b); Pub. L. 95-202, 91 Stat. 1433)

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's

entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of \$828. (38 U.S.C. 1690, 1692, 1693; Pub. L. 95-202, 91 Stat. 1433)

32. Section 21.4251 is amended as follows:

(a) By deleting "§ 21.4201(d)(4)" and inserting "§ 21.4201(c)(4)" in paragraph (a)(1).

(b) By revising paragraph (a)(6) and (f) and adding paragraph (h) and a cross reference so that the added and revised material reads as follows:

§ 21.4251 Period of operation of course.

(a) *General.* A course offered by a school other than a job training establishment will be appropriate for the enrollment of a veteran or eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

(6) Any course offered by an educational institution under a contract with the Department of Defense that (i) is given on, or immediately adjacent to, a military base, (ii) is available only to active duty military personnel and/or their dependents and (iii) has been approved by the State approving agency of the State in which the base is located or by the State approving agency in the State having jurisdiction over the educational institution offering the course when the course is a degree course being taught outside the United States. See paragraph (f) of this section for specific additional requirements as to branch location schools. A course is being given at a location immediately adjacent to a military base if the facilities are clearly neighboring to the base or are in close proximity to it and must be easily accessible to active duty personnel. The location must be under effective supervision of the base military authorities. The Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction pursuant to paragraph (h) of this section may waive the requirements referred to in this subparagraph in whole or in part, when such a waiver is in the interest of the veteran and the Federal Government. (38 U.S.C. 1789(b); Pub. L. 95-202, 91 Stat. 1433)

(f) *Subsidiary branch or extension.* Notwithstanding the provisions of paragraph (a) (1), (2), (3), or (4) of this section the 2-year period of operation requirement will apply to courses at subsidiary branches or extensions as

provided in the following subparagraphs:

This requirement will apply to any course offered by a branch or extension of a public or other tax-supported institution where the branch or extension is located outside the area of the taxing jurisdiction providing support to the institution unless the requirement is waived, in whole or in part, upon a determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3), or (4) of this section.

(2) This requirement will apply to any course offered by a branch or extension of a proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond the normal commuting distance of such institution and to a proprietary profit educational institution, even if the branch or extension is located within commuting distance unless the requirement is waived, in whole or in part, upon the determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3) or (4) of this section.

(3) Additional facilities acquired by a school in the same general locality because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the 2-year limitation if all of the following conditions are met:

(i) The school has been in operation for a period of 2 years or more;

(ii) The school has reached the limit of its enrollment capacity in its present facilities;

(iii) The courses to be offered at the additional facilities are the same as those given in the present facilities; and

(iv) The additional facilities are within normal commuting distance of the present facilities. (38 U.S.C. 1789(b); Pub. L. 95-202, 91 Stat. 1433)

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a)(6), (f)(1) or (f)(2) of this section

may apply to the appropriate Veterans Administration field station Director. The Veterans Administration field station Director may grant a waiver only when the conditions specified in this paragraph have been met. In all other instances he or she shall inform the school requesting a waiver that the request is denied. If a school, upon being informed, would like the request to be considered further, the request will be forwarded to the Director, Education and Rehabilitation Service with the field station Director's recommendation.

(1) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to a military base located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on any application sent through the State approving agency certifies that the course is available only to military personnel and/or their dependents, and/or civilian employees of the base, and/or persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it.

(ii) The State approving agency of the State in which the course is offered certifies that the course meets all other approval requirements.

(2) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to military base located outside the United States. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to persons whom the base commander has permitted to attend, and

(ii) The State approving agency having jurisdiction over the school offering the course certifies that the course meets all other approval requirements.

(3) The Director of Veterans Administration field station of jurisdiction may exercise authority found in paragraph (f) of this section to allow a waiver of the requirements of either paragraph (f)(1) or (f)(2) of this section. He or she may grant such a waiver when he or she finds that:

(i) No alternative comparable courses are effectively open to veter-

ans or eligible persons within normal commuting distance of the site where the course is offered for which a waiver is requested.

(ii) The compliance history of the parent school is satisfactory. This includes such factors as enrollment certification timeliness and accuracy, false or deceptive advertising complaints, and school liability indebtedness to the Veterans Administration.

(iii) The course for which a waiver is requested is also being offered at the school's main campus.

(iv) All credits earned in the course offered at the branch or extension are acceptable on transfer to the main campus without reservation.

(v) No contracts exist between the school and any other institution or entity which provide for recruitment of students for the course by the other institution or entity, or student payment of tuition and fees to the other institution or entity rather than to the school, or which effectively prevent the school's faculty on its main campus from overseeing the course being offered at the branch or extension.

(4) A school, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1789; Pub. L. 95-202, 91 Stat. 1433)

CROSS REFERENCE: Courses offered at branches or extensions. See § 21.4266.

33. Section 21.4266 is amended as follows:

(a) By adding a cross reference following paragraph (c) to read as follows:

CROSS REFERENCE: Period of operation of course. See § 21.4251.

(b) By revising paragraph (c)(2) (the introductory portion preceding subdivision (i)) to read as follows:

§ 21.4266 Courses offered at subsidiary branches or extensions.

(c) *Separate approval.* If the course offered at a subsidiary branch or extension cannot qualify under paragraph (b) of this section for a com-

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blined approval with the courses offered at the educational institution's parent facility, the State approving agency can only approve the courses separately. Such a course may not be approved if the branch or extension neither has administrative capability nor can qualify for an exception to having administrative capability.

(2) Notwithstanding any other provisions of this paragraph courses may be approved separately at a branch or extension without administrative capability if the parent facility within the same State:

34. Section 21.4270 is revised to read as follows:

§ 21.4270 Measurement of courses.

(a) Trade, technical, high school and high school preparatory courses shall be measured as stated in this table. Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

COURSES		Full time	3/4 time	1/2 time	Less than 1/2 more than 1/4 time	1/4 time or less
Kind of school	Kind of course					
Trade or technical - non-accredited (includes college courses not leading to a standard degree) ¹	Shop practice an integral part of course	30 clock hours attendance with not more than 2-1/2 hours rest period allowance and not more than 5 hours of supervised study	22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3-3/4 hours of supervised study	15 through 21 clock hours attendance with not more than 1-1/4 hours rest period allowance and not more than 2-1/2 hours of supervised study	8 through 14 clock hours attendance with not more than 3/4 hours rest period allowance and not more than 1-1/4 hours of supervised study	1 through 7 clock hours attendance
	Theory and class instruction predominates ²	25 clock hours net instruction and not more than 5 hours of supervised study	18 through 24 clock hours net instruction and not more than 3-3/4 hours of supervised study	12 through 17 clock hours net instruction and not more than 2-1/2 hours of supervised study	7 through 11 clock hours net instruction and not more than 1-1/4 hours of supervised study	1 through 6 clock hours net instruction
Trade or technical - accredited (includes college courses not leading to a standard degree) ¹	Shop practice an integral part of course ³	22 clock hours attendance with not more than 2-1/2 hours rest period allowance	16 through 21 clock hours attendance with not more than 2 hours rest period allowance	11 through 15 clock hours attendance with not more than 1-1/4 hours rest period allowance	6 through 10 clock hours attendance with not more than 3/4 hours rest period allowance	1 through 5 clock hours attendance
	Theory and class instruction predominates ^{2,3}	18 clock hours net instruction	13 through 17 clock hours net instruction	9 through 12 clock hours net instruction	5 through 8 clock hours net instruction	1 through 4 clock hours net instruction
High school - nonaccredited	High school diploma or equivalent ^{4,5}	25 clock hours net instruction and not more than 5 hours of supervised study or 4 units per year or equivalent	18 through 24 clock hours net instruction and not more than 3-3/4 hours of supervised study or 3 units per year or equivalent	12 through 17 clock hours net instruction and not more than 2-1/2 hours of supervised study or 2 units per year or equivalent	7 through 11 clock hours net instruction and not more than 1-1/4 hours of supervised study or 1 unit per year or equivalent	1 through 6 clock hours net instruction
High school - accredited	High school diploma or equivalent ^{4,5}	18 clock hours net instruction or 4 units per year or equivalent	13 through 17 clock hours net instruction or 3 units per year or equivalent	9 through 12 clock hours net instruction or 2 units per year or equivalent	5 through 8 clock hours net instruction or 1 unit per year or equivalent	1 through 4 clock hours net instruction
Elementary school - non-accredited	High school preparatory ⁴	25 clock hours net instruction and not more than 5 hours of supervised study	18 through 24 clock hours net instruction and not more than 3-3/4 hours of supervised study	12 through 17 clock hours net instruction and not more than 2-1/2 hours of supervised study	7 through 11 clock hours net instruction and not more than 1-1/4 hours of supervised study	1 through 6 clock hours net instruction
Elementary school - accredited	High school preparatory ⁴	18 clock hours net instruction	13 through 17 clock hours net instruction	9 through 12 clock hours net instruction	5 through 8 clock hours net instruction	1 through 4 clock hours net instruction

(38 U.S.C. 1788; Pub. L. 95-202, 91 Stat. 1433)

¹ An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter or semester hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section, provided: (1) the academic portions of such courses must require outside preparation and be measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses must be measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, (3) the shop portions of such courses must be measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1-1/2 hours for 3/4 time courses of 16-21 clock hours; 1 hour for 1/2 time courses of 11-15 clock hours; or 1/2 hour for less than 1/2 time courses of 6-10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

² In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops, in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

³ Supervised study must be excluded.

⁴ Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing a course at a rate which would result in an accredited academic high school diploma at the end of 4 ordinary school years, he or she is considered in full-time training. High school diploma courses or equivalent available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

⁵ Diploma course or equivalent based on completion of 16 instruction units. High school diploma courses or equivalent are available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

(b) Collegiate, professional and on-the-job training courses shall be measured as stated in this table. Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

COURSES		Full time	3/4 time	1/2 time	Less than 1/2 more than 1/4 time	1/4 time or less
Kind of school	Kind of course					
Collegiate undergraduate	Standard collegiate courses including cooperative and external degree programs ¹	14 semester hours or equivalent ²	10 through 13 semester hours or equivalent	7 through 9 semester hours or equivalent	4 through 6 semester hours or equivalent	1 through 3 semester hours or equivalent
Collegiate graduate	Standard collegiate graduate courses including law and external degree programs ²	14 semester hours or equivalent or as certified by a responsible official of the school ²	10 through 13 semester hours or as certified by a responsible official of the school	7 through 9 semester hours or as certified by a responsible official of the school	4 through 6 semester hours or as certified by a responsible official of the school	1 through 3 semester hours or as certified by a responsible official of the school
Professional nonaccredited	Law only ³	12 class sessions per week	9 through 11 class sessions per week	6 through 8 class sessions per week	4 through 5 class sessions per week	1 through 3 class sessions per week
Professional accredited and equivalent	Internships and residencies: Medical, Dental Osteopathic Nursing, X-ray, medical technology, medical records librarian, physical therapy ⁴	As established by accrediting association	Full time only			
		18 clock hours or 14 semester hours, as appropriate	13 through 17 clock hours or 10 through 13 semester hours, as appropriate	9 through 12 clock hours or 7 through 9 semester hours, as appropriate	5 through 8 clock hours or 4 through 6 semester hours, as appropriate	1 through 4 clock hours or less than 4 semester hours, as appropriate
Training establishment	Apprentice or other on-the-job ⁵	Standard workweek	Full time only			
Agricultural	Farm cooperative ⁶	10 clock hours net instruction	7 clock hours net instruction	5 clock hours net instruction	No provision	

(38 U.S.C. 1582, 1732, 1777, 1787, 1788; Pub. L. 95-202, 91 Stat. 1433).

¹ Independent study programs will be measured as provided in § 21.4280. Cooperative courses may be measured on full-time basis only.

² Where the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are (1) charged full-time tuition, or (2) considered full-time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement.

When 12 hours is properly certified as full-time, 9 through 11 hours will be measured as 3/4 time, 6 through 8 hours will be measured as 1/2 time, 4 through 5 hours will be measured as less than 1/2 time and more than 1/4 time, and 1 through 3 hours will be measured as 1/4 time or less. All other undergraduate courses will be measured as indicated in the table for undergraduate or professional courses as appropriate, but where 13 credit hours or the equivalent is certified as full time, 3/4 time will be 10 through 12 hours. When in accordance with § 21.4273(a), a responsible official of a school certifies that a lesser number of hours constitute full time, 3/4 time, 1/2 time, less than 1/2 time and more than 1/4 time, or 1/4 time, the certification will be accepted for measurement purposes.

Upon request of a beneficiary, an increase in rates warranted under this criteria may be authorized to him or her effective March 26, 1970, if he or she was enrolled on or after March 26, 1970. The request of the beneficiary will not be required for other payments under this criteria.

To meet criteria for full-time measurement under 38 U.S.C. chapters 34 and 35 in standard collegiate courses which include required noncredit deficiency courses, in the absence of a certification under § 21.4272(f) the noncredit deficiency courses will be converted on the basis of the applicable measurement criteria; that is, 18, 25 or 30 clock hours, 4 "Carnegie Units", or 12, 13 or 14 (as appropriate) semester hours equal full time. The credit-hours equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

³ Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

⁴ Supervised study must be excluded.

⁵ Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

⁶ In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

⁷ For full-time training the 440 clock hours a year may be prescheduled to provide not less than 80 clock hours in any 3-month period.

35. Section 21.4277 is revised to read as follows:

§ 21.4277 Discontinuance; unsatisfactory progress and conduct.

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Veterans Administration. Progress is unsatisfactory if:

(1) The veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending, or

(2) The veteran or eligible person is not progressing at a rate that will permit him or her to graduate within the approved length of the course based on the training time as certified to the Veterans Administration by the educational institution plus an additional length of time as stated in this paragraph, notwithstanding the school's policy, unless mitigating circumstances are found.

(i) If a school is organized on a term basis with credit-hour measurement it will report unsatisfactory progress, if the student accumulates unsatisfactory punitive grades in the equivalent of more credit hours than the minimum full-time training load, for Veterans Administration purposes (normally 12 or 14 hours).

(ii) If a school is organized on a term basis without credit-hour measurement it will report unsatisfactory progress, if the student will be required to extend the equivalent of more than one term based on the minimum full-time requirement.

(iii) If a school is not organized on a term basis, for Veterans Administration purposes, it will report unsatisfactory progress when it determines that the student will require an extension beyond 10 percent of the approved length of the course to complete the program.

(b) *Mitigating circumstances.* Mitigating circumstances include, but are not limited to:

(1) Continuous pursuit of the program of training is precluded because of illness of the veteran or eligible person or because of illness or death in his or her immediate family.

(2) Unavoidable conditions arise in connection with the veteran's or eligible person's employment which preclude continuous pursuit of the program. Such conditions are a geographical transfer or change in the hours or conditions of employment.

(3) Immediate family or financial obligations beyond the control of the veteran or eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(4) The course is being pursued by a student under subchapter V of chapter 34 or section 1733 of chapter 35, title 38, United States Code, who fails to satisfactorily complete a course without fault.

(5) The course is discontinued by the school.

(6) The veteran is required to perform unanticipated active duty military service, including active duty for training.

(c) *Suspension.* (1) After November 22, 1977 the Director of a Veterans Administration field station of jurisdiction may temporarily suspend the requirements of paragraphs (a)(2) and (d) of this section as they apply to any main campus branch or extension of an educational institution that is fully accredited by a recognized regional or national accrediting agency. Any educational institution which wants a suspension must make specific application to the Director through the State approving agency. The beginning date of the suspension shall be set by the Director on the basis of the evidence of record, but in no event shall it be earlier than November 23, 1977. A suspension may be terminated by the Director of the Veterans Administration field station upon written notice to the Chief Officer of the educational institution. A suspension must be terminated whenever a school no longer meets the criteria set forth in paragraph (c)(1) (i), (ii) and (iii) of this section. No suspension may be granted unless:

(i) The educational institution has submitted a copy of the catalog for the appropriate main campus, branch or extension to the Veterans Administration field station through the State approving agency.

(ii) The educational institution certifies that the policies pertaining to standards of progress or conduct contained in the catalog or bulletin pursuant to § 21.4253(d)(1) are being enforced.

(iii) The catalog or bulletin states these policies fully and clearly. This requirement will be satisfied when the policy and regulations relative to standards of progress and conduct:

(a) Are stated without omission.

(b) Include a statement describing grades or credit assigned for completed courses.

(c) Specify the points during the course of study which will be designated for evaluation of student progress. Schools operating on a term basis

must make such an evaluation at the end of each term, quarter or semester.

(d) Specify as satisfactory a minimum grade average or credit level for each evaluation. These levels must be logically related to the minimum graduation requirements.

(e) Require that at each evaluation point the credit level or grade average maintained by the veteran or eligible person must be compared with the standard.

(f) State the action to be taken by the school when the standards are not met. This must include any provisions for interrupting the student's enrollment, provisions for probationary periods, if any, and conditions for the student's reentrance.

(g) State the progress records kept by the institution and furnished the student.

(h) State the conditions for dismissal for unsatisfactory conduct, and the conditions for reentrance in the school after such a dismissal. (38 U.S.C. 1674, 1724; Pub. L. 95-202, 91 Stat. 1433)

(2) An educational institution, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reserve a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1674, 1724; Pub. L. 95-202, 91 Stat. 1433)

(d) *Satisfactory conduct.* Entitlement to a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See § 21.4253. (38 U.S.C. 1674 and 1724)

36. In § 21.4279, paragraph (b)(1) is revised to read as follows:

§ 21.4279. Combination correspondence-residence program.

(b) The rate of educational assistance allowance payable shall be computed as set forth in §§ 21.4270 and 21.4136(a).

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month of entitlement charged for each \$311 of cost reimbursed. (38 U.S.C. 1786(a); Pub. L. 95-202, 91 Stat. 1433)

37. In § 21.4500, paragraphs (d), (e)(4), (f) and (h) are revised and paragraph (e)(6) is added so that the added and revised material reads as follows:

§ 21.4500. Definitions.

(d) *Loan period.* (1) Loans made for enrollment periods which begin before August 1, 1978 are normally to be made for a quarter, semester, term, academic year or academic year plus a summer term. Loans made for enrollment periods which begin after July 31, 1978, normally are to be made for a quarter, semester, summer term or two consecutive quarters.

(2) A loan made to a veteran or eligible person attending a course not organized on a term, quarter or semester basis will be granted for a term of not more than 12 months provided the course requires at least 6 months at the full-time rate to complete, and the course begins before August 1, 1978. If such a course begins after July 31, 1978, a loan will be granted for a period of not more than 6 months at a time.

(i) The Director of the Veterans Administration field station of jurisdiction may waive the requirement that such a course must take at least 6 months to complete. Such a waiver of the length of the course shall be granted by the Director only if a school requests one for a course and the Director finds that:

(a) During the previous 2 years at least 75 percent of the students enrolled in the course completed it.

(b) During the previous 2 years at least 75 percent of the persons completing the course found employment in the occupational category for which the course is designed to provide training.

(c) The default rate on all Veterans Administration education loans ever made to students at the educational institution does not exceed 5 percent or 5 cases, whichever is greater.

(d) The default rate on all loans ever made to students at the educational

institution pursuant to loan programs administered by the Department of Health, Education; and Welfare does not exceed 5 percent or 5 cases, whichever is greater.

(e) The course is at least 3 months long.

(f) The course is approved for full-time attendance only.

(g) No more than 35 percent of the students attending the course are receiving educational assistance from the Veterans Administration.

(h) The Field Director for the region in which the Veterans Administration field station is located concurs in the waiver.

(ii) If a school disagrees with a decision of a Director of a Veterans Administration field station, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education and Rehabilitation Service. The Director of the Veterans Administration field station shall forward all requests to the Director, Education and Rehabilitation Service. He or she shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Veterans Administration field station, but he or she shall not grant a waiver if the requirements of paragraph (d)(2)(i) of this section are not met.

(iii) A waiver will remain in effect until the date on which the course fails to meet one of the requirements of paragraph (d)(2)(i) of this section. A school which has received a waiver for a course must notify the Director of the Veterans Administration field station of jurisdiction within 30 days of the date on which one of those requirements is not met. (38 U.S.C. 1798(c); Pub. L. 95-202, 91 Stat. 1433)

(e) *Total amount of financial resources.* This term means the total of the following:

(4) For a loan period which begins before August 1, 1978 educational assistance received or receivable for the loan period by the veteran or eligible person under section 1631, 1661 or subchapter II of chapter 35, title 38, United States Code, exclusive of an education loan. For a loan period which begins after July 31, 1978, educational assistance received or receivable for the loan period by the veteran or other eligible person under section 1631, 1661, or subchapter II of chapter 35, title 38, United States Code, which applies solely to the veteran or eligible person. This amount shall be exclusive of an education loan. (38 U.S.C. 1798(b))

(6) Veterans Administration work-study allowance receiver or receivable by the veteran under section 1685, title 38, United States Code, during loan periods which begin after July 31, 1978. (38 U.S.C. 1798(b))

(f) *Actual cost of attendance.* (1) For loan periods which begin prior to August 1, 1978, this term means the actual charge per student for tuition, fees, room and board (or expenses related to commuting a reasonable distance), books, and an allowance for such other expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled.

(2) For loan periods which begin after July 31, 1978, this term means the actual per student charges for tuition, fees, books, an allowance for commuting (this allowance will be based on 12 cents per mile for distances which shall not exceed normal commuting distance), an allowance for other such expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled, and a room and board allowance. The room and board allowance shall be determined as follows:

(i) If the educational institution actually provides the veteran or eligible person with room and board, the allowance shall equal the actual charges to the veteran or eligible person for room and board.

(ii) If the educational institution provides some students with room and board, but does not provide room and board for the veteran or eligible person, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board, or the amount for room and board which the educational institution would have charged the veteran or eligible person, had the educational institution provided him or her with room and board, whichever is the lesser.

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board or the amount the veteran or eligible person would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board. (38 U.S.C. 1798(b))

(h) *Annual adjusted effective income.* (1) For loan periods beginning before August 1, 1978, this income shall be considered to be the net taxable income less the Federal income tax paid or payable of the veteran or

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other eligible person. It is not limited to such income which may be available for use by the veteran or eligible person for education needs. The amount available for education needs is to be determined in accordance with § 21.4503.

(2) For loan periods beginning after July 31, 1978, this income shall include:

(i) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration compensation and pension, disability retirement, unemployment compensation, welfare payments, Social Security benefits, etc.

(ii) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration, less:

(a) Authorized deductions for exemptions;

(b) Itemized or standard deduction, whichever is greater;

(c) Mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

38. Section 21.4501 is revised to read as follows:

§ 21.4501 Eligibility.

(a) *General.* The criteria for determining an eligible veteran's or other eligible person's eligibility for an education loan depends upon whether or not the eligible veteran's or eligible person's delimiting period as determined by §§ 21.1042, 21.1043, 21.3041 or 21.3046 has expired. Any eligible veteran or eligible person shall be entitled to an education loan if he or she meets the criteria of this paragraph as well as the criteria of either paragraph (b) or (c) of this section as appropriate. The eligible veteran or eligible person must:

(1) Have financial resources that may be reasonably expected to be expended for education needs which are insufficient to meet the expected actual cost of attendance; and

(2) Execute a promissory note payable to the Veterans Administration, as provided by § 21.4504.

(b) *Additional criteria for eligible veterans and eligible persons eligible to receive educational assistance allowance.* An education loan shall be granted to an eligible veteran or eligible person whose delimiting period as determined by §§ 21.1042, 21.1043, 21.3041 or 21.3046 has not expired if the eligible veteran or eligible person meets the eligibility criteria found in paragraph (a) of this section and if the eligible veteran or eligible person:

(1) At the time the loan is authorized, is in attendance at an educational

institution on at least a half-time basis and

(i) Is enrolled in a course leading to a standard college degree, or

(ii) Is enrolled in a course, the completion of which requires 6 months or longer, leading to an identified and predetermined professional or vocational objective; unless the Director of the Veterans Administration field station of jurisdiction waives these requirements, in whole or in part, upon determination that to do so is in the interest of the veteran or eligible person and the Federal Government; and

(2) Is in receipt of educational assistance allowance under section 1661 or subchapter II of chapter 35, title 38, United States Code.

(c) *Additional criteria for eligible veterans, spouses and surviving spouses not eligible to receive educational assistance allowance.* (1) An education loan may be granted to an eligible veteran, spouse or surviving spouse whose delimiting period as determined by §§ 21.1042, 21.1043 or 21.3046 (a), (b) or (d) has expired.

(2) A loan shall be granted if the eligible veteran, spouse or surviving spouse meets the eligibility criteria found in paragraph (a) of this section and if he or she:

(i) Has unused entitlement provided under section 1661 or 1711, title 38, United States Code, and

(ii) During the term, quarter or semester for which the loan is granted, is enrolled on a full-time basis in pursuit of the approved program of education in which he or she was enrolled on the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) and

(iii) Was enrolled in a program of education on a full-time basis:

(a) On the date his or her period of eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), or

(b) On the last date of the ordinary term, semester or quarter preceding the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), if the delimiting date fell during a school break or summer term.

(3) The period for which a loan may be granted shall not extend beyond the earliest of the following dates:

(i) November 23, 1979, or 2 years after the expiration of the period of eligibility as determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), or

(ii) The date on which the entitlement of the eligible veteran, spouse or surviving spouse is exhausted, or

(iii) The date on which the eligible veteran, spouse or surviving spouse completes the approved program of education which he or she was pursuing on the date the delimiting period determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) expired. (38

U.S.C. 1662, 1737, 1798; Pub. L. 95-202, 91 Stat. 1433)

(d) *Exclusions.* No veteran or other eligible person shall be authorized an education loan who:

(1) Is pursuing a program of correspondence, flight, apprenticeship, or other on-job or Predischarge Education Program training, or

(2) Has defaulted on a previous education loan and there is a remaining unliquidated payment due the Veterans Administration. (38 U.S.C. 1798(c))

39. In § 21.4502, paragraph (b)(1) and (4) is revised, paragraph (b)(6) is revoked, and paragraph (c) is added so that the added and revised material reads as follows:

§ 21.4502 Applications.

(b) *Information.* The application shall provide the Veterans Administration with the following information and such other information as may be reasonable upon specific request:

(1) For loan periods beginning before August 1, 1978, a statement of the amount of the net income of the veteran or other eligible person, less the Federal income tax paid or payable thereon, as reported or expected to be reported on the Federal income tax return of each such individual for the current tax year in which the application for the education loan is received by the Veterans Administration. For loan periods beginning after July 31, 1978, a statement of nontaxable income for the student for the current tax year in which the application for the education loan is received by the Veterans Administration; as well as a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Veterans Administration less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

(4) The amount of reasonably anticipated expenses for room and board to be expended by the veteran or other eligible person during the period for which the loan is sought, including a reasonable amount not to exceed 12 cents per mile for commuting normal distances to classes if the student does not reside on campus. Applications for loans covering loan periods which begin after July 31, 1978 may also provide the Veterans Administration with a statement of the amount of charges for room and board which the school would have made to the veteran or eli-

gible person had the school provided the veteran or eligible person room and board. If the school does not provide room and board, the application may provide the Veterans Administration with a statement of the charges for room and board which the veteran or eligible person would have received had he or she been provided room and board at the State college or State university which provides room and board. (38 U.S.C. 1798(b))

(6) [Revoked]

(c) *Assignment.* At the time of application the veteran, spouse or surviving spouse shall assign to the Veterans Administration (for deposit in the Veterans' Administration Education Loan Fund established under 38 U.S.C. 1799) the amount of any accelerated payment of educational assistance allowance to which he or she may become entitled, including any matching contributions of a State or local government unit made pursuant to 38 U.S.C. 1682A(b)(8), in connection with the school term for which the loan is granted. (38 U.S.C. 1798(f); Pub. L. 95-202, 91 Stat. 1433)

-40. In § 21.4503, paragraph (b)(2), (3) and (4) is revised to read as follows:

§ 21.4503 Determination of loan amount.

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(2) The aggregate of the amounts any veteran or other eligible person may borrow for an education loan may not exceed the amount obtained by multiplying \$311 times the number of months of educational assistance allowance to which the veteran or other eligible person is entitled or would be entitled were it not for the expiration of his or her delimiting period under section 1661 or subchapter II of chapter 35, title 38, United States Code, on the date that training commences during the period for which the loan is sought, but in no event more than \$2,500 in any one academic year. (38 U.S.C. 1798(b); Pub. L. 95-202, 91 Stat. 1433)

(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than the academic year plus the summer term, quarter or semester at least 8 weeks in length or for a period which begins after July 31, 1978 that is longer than two consecu-

tive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than 12 months or for a period which begins after July 31, 1978 that is longer than 6 months. (38 U.S.C. 1798)

(4) The following maximum amounts shall be paid on the loan at the beginning of the term:

(i) \$2,500 for an academic year which begins before August 1, 1978.

(ii) \$3,330 for an academic year and following summer term which begin before August 1, 1978.

(iii) \$1,660 for a quarter and following summer term which begin before August 1, 1978.

(iv) \$2,080 for a semester and following summer term which begin before August 1, 1978.

(v) \$1,250 for any semester.

(vi) \$830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(vii) \$1,660 for two consecutive quarters which begin after July 31, 1978.

(viii) \$270 per month of enrollment for a course not leading to a standard college degree if less than 6 months in length.

(ix) \$1,660 for a course not leading to a standard college degree 6 through 8 months in length provided the loan period begins before August 1, 1978.

(x) \$1,660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xi) \$270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xii) \$2,500 for a course not leading to a standard college degree 9 through 11 months in length provided that the loan period begins before August 1, 1978.

(xiii) \$3,330 for a course not leading to a standard college degree 12 months in length provided that the loan period begins before August 1, 1978. (38 U.S.C. 1798(b); Pub. L. 95-202, 91 Stat. 1433)

41. In § 21.4504, paragraph (a)(4) is revised to read as follows:

§ 21.4504 Promissory note.

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, United States Code, to any eligible veteran or eligible person shall be in

the form of a promissory note which shall include.

(4) A provision for prepayment of all or part of the loan, without penalty, at the option of the borrower. (38 U.S.C. 1798)

42. A new § 21.4505 is added (the former § 21.4505 is revised and redesignated § 21.4507) to read as follows:

§ 21.4505 Check delivery.

(a) *General.* Education loans by the Veterans Administration shall be made by a check payable to the veteran or eligible person and shall be mailed promptly to the educational institution in which the veteran or eligible person is enrolled for delivery by the educational institution.

(b) *Delivery and certification.* (1) The educational institution, electing to participate in this program, shall deliver an education loan check to the veteran or eligible person and shall certify the fact of delivery to the Veterans Administration immediately upon delivery. If the delivery is not made within 30 days after the institution receives the check, it shall return the check to the Veterans Administration.

(2) The Director of the Veterans Administration field station of jurisdiction may direct that education loan checks be sent directly to veterans and other eligible persons when:

(i) The educational institution demonstrates an inability to comply with these requirements; or

(ii) The educational institution fails to provide adequately for the safekeeping of the checks prior to the delivery to the student or return to the Veterans Administration; or

(iii) The educational institution elects not to participate in this program; or

(iv) There is compelling evidence that the institution is unable to discharge its responsibilities under this program. (38 U.S.C. 1798; Pub. L. 95-202, 91 Stat. 1433)

43. The former § 21.4506 is revoked and a new section is added to read as follows:

§ 21.4506 Education loan forgiveness through accelerated payment of educational assistance allowance.

(a) *General.* A veteran or eligible person may qualify for a reduction in the amount of an outstanding education loan obligation. The reduction will consist of an amount representing an offset against the veteran's or eligible person's entitlement and an equal matching amount paid by a State and/or local governmental unit. The offset

against the veteran's or eligible person's entitlement is considered to be an accelerated payment of educational assistance allowance. If the veteran or eligible person received a loan for more than one school term, he or she may receive accelerated payment of educational assistance allowance for each.

(b) *Eligibility.* The veteran or eligible person shall be eligible for an accelerated payment of educational assistance allowance for any school term as defined in § 21.4200(n), when all of the following conditions are met:

(1) The veteran or eligible person:

(i) Was enrolled as a full-time student throughout the school term for which the particular education loan was granted, or

(ii) Was enrolled as a full-time student throughout one semester which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted, or

(iii) Was enrolled as a full-time student throughout two consecutive quarters which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted.

(2) The veteran or eligible person was entitled to an educational assistance allowance under either chapter 34 or chapter 35 during the school term for which the education loan was granted. This requirement will be met even though some or all payments may have been withheld.

(3) The student received an education loan from the Veterans Administration after January 1, 1978.

(4) The combined amount of tuition and fees of the educational institution in which the veteran or eligible person was enrolled:

(i) Exceeded \$700 for the school term for which the education loan was granted;

(ii) Exceeded \$450 for two consecutive quarters beginning after January 1, 1978 and ending August 1, 1978 for which the education loan was granted;

(iii) Exceeded \$350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which the education loan was granted.

(5) The educational institution in which the veteran or eligible person completed the program of education he or she was pursuing during the term for which he or she received the education loan certifies to the Veterans Administration that:

(i) The veteran or eligible person has satisfactorily completed that program of education and attained the predetermined and identified educational, professional, or vocational objective which the veteran or eligible person had been pursuing during the term he or she received the education loan, and

(ii) The educational institution has awarded the veteran or eligible person the appropriate educational degree, diploma or certificate signifying such attainment.

(6) The veteran or eligible person applies timely for accelerated payment as described in paragraph (c) of this section.

(7) The educational institution in which the veteran or eligible person was enrolled has certified that not more than 35 percent of the total number of students enrolled in the same school term as the one for which the veteran or eligible person received the education loan were receiving educational assistance from the Veterans Administration. This requirement must be met for each semester or quarter within the school term.

(8) A State or local governmental unit has made a matching payment to the Veterans Administration Education Loan Fund pursuant to a program meeting the criteria of paragraph (d) of this section.

(c) *Time limits.* An accelerated payment of educational assistance may be made only if a formal claim for it is received by the Veterans Administration within 180 days of the later of the following two dates:

(1) The date on which the degree, diploma, or certificate described in paragraph (b)(5) of this section was awarded, or

(2) The date on which the State or local governmental unit or jurisdiction established a program as required in paragraph (d) of this section. If more than one such matching payment program is established which may apply to the veteran or eligible person, accelerated payment will be based only on those programs for which a timely application was received.

(d) *State or local participation.* A State or local governmental unit electing to participate in the accelerated payment program must establish a program to do so. Such a program:

(1) Must be established prior to January 1, 1983.

(2) Must pertain only to veterans and eligible persons who received the education loan while enrolled in an educational institution located within the State or area of local governmental jurisdiction that is establishing the program.

(3) Must provide for payments on behalf the veteran or eligible person to be made to the Veterans Administration for deposit in the Veterans Administration Education Loan Fund. Such payments may match the maximum accelerated payment as computed in paragraph (e) of this section or a lesser amount.

(4) May be limited to veterans and eligible persons who are bona fide resi-

dents of the State or local governmental unit establishing the program.

(e) *Computation of accelerated payment.* The amount of accelerated payment for a term shall equal whichever of the following amounts is the least:

(1) The amount equal to the education assistance allowance actually awarded to the veteran or the eligible person for the school term for which the educational loan was granted;

(2) An amount equal to 33 ⅓ percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds \$700 for the school term for which the educational loan was granted;

(3) An amount equal to 33 ⅓ percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds \$450 for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted;

(4) An amount equal to 33 ⅓ percent of the amount by which tuition and fees charged to the veteran or eligible person exceeds \$350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted.

(5) An amount equal to 33 ⅓ percent of the amount by which the outstanding education loan obligation (principal only) for a school term exceeded \$700 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(6) An amount equal to 33 ⅓ percent of the amount by which the outstanding education loan obligation (principal only) for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 exceeded \$450 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(7) An amount equal to 33 ⅓ percent of the amount by which the outstanding education loan obligation (principal only) for one semester beginning after January 1, 1978 and ending before August 1, 1978 exceeded \$350 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(8) The amount which the State and/or local governmental unit concerned pays to the Veterans Administration to match the accelerated payment;

(9) An amount equal to the number of months (and fractional months) of remaining entitlement multiplied by the full-time rate (with dependents) in effect for the last month of the program within the delimiting period. (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

(f) *Entitlement charges.* Charges against the period of entitlement of a veteran or eligible person who receives an accelerated payment shall be made as stated in § 21.1045(h). (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

44. Section 21.4507 (formerly § 21.4505) is added to read as follows:

§ 21.4507 Advertising.

(a) *General.* No educational institution or training establishment shall include a statement in advertisements or brochures intended to solicit students as to the availability of education loans from the Veterans Administration for eligible persons, except as provided in paragraph (b) of this section.

(b) *Form.* The statement which is permitted shall be as follows: "Certain eligible veterans and other eligible persons may qualify for a maximum educational loan of \$2,500 per academic year from the Veterans Administration depending upon the need. Applications for such loans shall be made to the Veterans Administration on forms prescribed by it." (38 U.S.C. 1796, 1798(b); Pub. L. 95-202, 91 Stat. 1433)

[FR Doc. 79-4006 Filed 2-6-79; 8:45 am]

[4110-12-M]

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Office of the Secretary

[41 CFR Parts 3-1, 3-3, 3-4, 3-5, 3-7, 3-11, 3-16, 3-30, 3-50, 3-56]

CONTRACT CLAUSES; PROCUREMENT FORMS

AGENCY: Department of Health, Education, and Welfare.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare, is proposing to amend 41 CFR Subpart 3-7.50 to consolidate optional clauses prescribed for use in HEW contracts and modify Subpart 3-16.50 to delete the optional clauses contained therein, to provide required modifications to Form HEW-315A, and to add necessary alterations to Form HEW-314 when a contract is not for research and development. Also included are instructions relative to the title provisions of Clause 11, Government Property, in Forms HEW-315 and -315A. The consolidation of the clauses under one heading will simplify 41 CFR Chapter 3 and increase the public's comprehension of the use of these clauses.

DATE: Comments must be received on or before March 26, 1979. Any person or organization wishing to submit data, views, or comments pertaining to the proposed amendments may do so

by filing them in duplicate with the individual at the address listed below.

ADDRESS: Send comments to David J. Eskenazi, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, OASMB-OS, Room 539 H, Hubert H. Humphrey Building, Department of Health, Education, and Welfare, Washington, D.C. 20201.

FOR FURTHER INFORMATION
CONTACT:

David J. Eskenazi, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement (202-245-8791).

SUPPLEMENTARY INFORMATION: The texts of optional clauses incorporated into 41 CFR Subpart 3-7.50 are deleted from other subparts and appropriate references to Subpart 3-7.50 are cited in lieu thereof. Certain clauses which are no longer in use have been expurgated.

It is therefore proposed to amend 41 CFR Chapter 3, Parts 7 and 16 in the manner set forth below.

(5 U.S.C. 301; 40 U.S.C. 486(c))

Dated: January 29, 1979.

E. T. RHODES,
Deputy Assistant Secretary for
Grants and Procurement.

PART 3-7—CONTRACT CLAUSES

Subpart 3-7.50 is deleted in its entirety and the following is substituted:

Subpart 3-7.50—Special Contract Clauses

Sec.

- 3-7.5000 Scope of subpart.
- 3-7.5001 Reusable cylinders and containers.
- 3-7.5002 Safety and health.
- 3-7.5003 HEW contract financial report.
- 3-7.5004 State and local taxes.
- 3-7.5005 Summarization clauses for contract modifications.
- 3-7.5006 Contracts conditioned upon the availability of funds.
- 3-7.5007 Government property clauses.
- 3-7.5007-1 Abandonment of Government property.
- 3-7.5007-2 Government property furnished "as is."
- 3-7.5007-3 Use and charges clause for facilities contracts.
- 3-7.5007-4 Maintenance clause for facilities contracts.
- 3-7.5007-5 Liability clause for facilities contracts.
- 3-7.5007-6 Examination of records clauses.
- 3-7.5008 Incremental funding of cost-reimbursement research and development contracts.
- 3-7.5009 Examples of option articles.
- 3-7.5010 Cost sharing.
- 3-7.5011 Use of GSA supply sources by contractors performing cost reimbursement contracts.
- 3-7.5012 Procurements involving human subjects.
- 3-7.5013 Contracts under the Indian Self Determination Act.

Sec.

- 3-7.5014 Negotiated procurement under the Buy Indian Act.
- 3-7.5015 Contracts made pursuant to any Act authorizing award to or for the benefit of Indians or Indian organizations.
- 3-7.5016 Insurance—liability to third persons.
- 3-7.5017 Method of payment—letter of credit.
- 3-7.5018 Alternate authorization and consent clause.
- 3-7.5019 Patent indemnity clause.
- 3-7.5020 Alternate rights-in-data clauses.
- 3-7.5020-1 Rights-in-data—special works.
- 3-7.5020-2 Rights-in-data—existing works.
- 3-7.5021 Maximum allowable cost for drugs.
- 3-7.5022 Withholding of contract payments.
- 3-7.5023 Excusable delays.
- 3-7.5024 Statement of cost and personnel responsible for report.
- 3-7.5025 Additional payment provision.

Subpart 3-7.50—Special Contract Clauses

§ 3-7.5000 Scope of subpart.

This subpart sets forth clauses primarily for use in contracts for personal property and nonpersonal services where special terms and/or conditions are required to insure satisfactory performance, delivery or protection of the Government's interest.

§ 3-7.5001 Reusable cylinders and containers.

The clause set forth below shall be inserted in contracts when delivery of the items may be in contractor furnished reusable gas cylinders or other containers.

DEMURRAGE CHARGE PROVISIONS

(a) Reusable gas cylinders or other containers identified below by offerors shall remain the property of the Contractor (except as provided in (c) below), and will be loaned without charge to the Government for the period stipulated below by offerors. In computing the period involved, such free loan period shall commence on the first day after date of delivery of each container to the herein specified f.o.b. point(s). Offerors who specify less than — days (to be determined by the Contracting Officer in accordance with trade custom), shall have their offers increased for evaluation purposes only by an amount arrived at by multiplying the number of days less than the established free loan period by the daily rental charge. In the event the offeror does not specify a free loan period, such period shall be — days (insert the same number of days as the established free loan period). Beginning with the first day after expiration of the free loan period to and including the date the containers are delivered to the Contractor's designated carrier, the Government shall pay the Contractor demurrage (rental) in the amount specified below. No demurrage shall accrue to the Contractor in excess of the herein specified container's replacement value. For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the herein specified replacement value less allocable demurrage paid therefor. Such lost or damaged con-

PROPOSED RULES

tainers paid for by the Government shall become the property of the Government.

(b) Empty containers will be delivered to the offeror's designated carrier (offeror to

identify applicable carrier below) f.o.b. points of original delivery specified in this solicitation/contract.

OFFERORS SHALL FURNISH THE FOLLOWING INFORMATION, AS APPLICABLE, FOR CONTAINERS:

Applicable Item No.	Type and size of Container	Quantity	Free Loan Period	Demurrage Charges Per Day Per Cylinder
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Replacement Value for Each Container	Identification and Location of Offeror's Carrier for Return of Empty Container
_____	_____

(c) When the offeror indicates that containers have a replacement value of less than \$10, the Government shall have the option to purchase containers and add the cost to the offered price. When purchase option is exercised, offers shall be evaluated accordingly. In this event, the container shall become the property of the Government.

§ 3-7.5002 Safety and health.

The following clause is covered by the policy set forth in Subpart 3-1.52 and is to be used in accordance with the instructions set forth in § 3-1.5203 and § 3-1.5204.

SAFETY AND HEALTH CLAUSE

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to all property; and for avoidance of work interruptions in the performance of the contract; the Contractor will comply with the following standards: (Insert the codes, standards, and criteria (including any applicable State and local requirements) prescribed by the Safety Officer). Further, the Contractor shall take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary: *Provided*, That if

compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause of this contract entitled "Changes."

(b) Prior to commencement of work, the Contractor will submit in writing his plan for complying with the safety and health provisions of this contract, and will meet with the Contracting Officer or his designated representative to discuss and develop a mutual understanding relative to administration of the overall safety program.

(c) During the performance of work under this contract, the Contractor shall comply with all procedures prescribed by the Contracting Officer for the control and safety of persons visiting the job site and will comply with such requirements to prevent accidents as may be prescribed by the Contracting Officer.

(d) The Contractor will maintain an accurate record of, and report to the Contracting Officer in such manner as the Contracting Officer may prescribe, all accidents and incidents resulting in death, traumatic injury, occupational disease, and/or damage to all property incident to work performed under the contract.

(e) The Contracting Officer shall notify (if otherwise, confirm in writing) the Contractor of any noncompliance with the provisions of this clause and corrective action

to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action. (Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose.) If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be the subject of claim for extension of time or for costs or damages by the Contractor.

(f) The Contractor shall insert the substance of this clause in each subcontract involving the use of hazardous materials or operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

§ 3-7.5003 HEW contract financial report.

Financial reports are required on all cost-reimbursement type contracts financed under letter of credit or Departmental Federal Assistance Financing System (DFAFS) methods of payment regardless of dollar value, and all other cost-reimbursement type of contracts of \$100,000 or more. The reports should be required not less than quarterly. Financial reports can be required on cost-reimbursement contracts under \$100,000 when financed by a method other than letter of credit or DFAFS only if they are considered necessary for effective contract monitoring and administration. When financial and manpower information is to be submitted on Form HEW-646, Financial Report of Individual Project/Contract, the contracting officer shall insert the clause set forth below in the RFP and resultant contract. The contracting officer should insert appropriate wording to specify the reporting period agree to, and should develop paragraph (d).

CONTRACT FINANCIAL REPORT

(a) Financial reports on Form HEW-646, Financial Reports of Individual Project/Contract, shall be submitted by the Contractor in accordance with the instructions which accompany the form, in an original and 2 copies, not later than fifteen (15) working days after the close of the reporting period. The line entries for subdivisions of work and elements of cost (expenditure categories) to be reported within the total contract shall be stated in paragraph (d) below. Subsequent changes and/or additions in the line entries shall be made in writing.

(b) The first financial report shall cover the period consisting of the (first full calendar month/first full three calendar months)

following the date of the contract, in addition to any fractional part of the initial month.

(c) If the final payment of this contract is to be made on the basis of a desk audit, the Contracting Officer may require the Contractor to submit detailed support for costs contained in one or more interim financial reports.

(d) (To be developed by the Contracting Officer.)

§ 3-7.5004 State and local taxes.

In all construction contracts, including vessel repair contracts, to be performed in North Carolina, the following sales and use tax clause must be included:

NORTH CAROLINA SALES AND USE TAX

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures, and equipment which become a part of, or annexed to, any building or structure erected altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Federal Procurement Regulations, the contract price includes North Carolina sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulations, any North Carolina sales and use taxes paid by the Contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) of this clause: (1) The Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina sales and use taxes paid thereon. Such statement shall also include the cost of tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina sales or use tax paid thereon by the Contractor. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(2) The Contractor shall obtain and furnish to the Contracting Officer similar certified statements by subcontractors.

(d) The certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion.

(e) The certified statements to be furnished pursuant to paragraph (c) of this clause shall be in the following form:

(SAMPLE CERTIFICATE)

I hereby certify that during the period _____ to _____ (name of Contractor or subcontractor) paid North Carolina sales and use taxes aggregating \$_____ with respect to building materials, supplies, fixtures, and equipment which have become a part of, or annexed to, a building or structure erected, altered or repaired by (name of Contractor) for the United States of America, and that the vendors from whom the property was

purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales or use taxes paid thereon are as set forth in the attachments hereto.

(f) In ship repair contracts, change paragraph (a) to read as follows: As used throughout this clause, the term "materials" means materials, supplies, fixtures and equipment which become a part of or are annexed to any vessel altered or repaired under this contract.

§ 3-7.5005. Summarization clauses for contract modifications.

The clauses set forth below shall be used as appropriate in contract modifications as concluding provisions of the modification.

(a) The contract amount is hereby (increased) (decreased) by \$____, from \$____ to \$____, by reason of this modification.

(b) The contract completion date is hereby changed from _____ to _____ by reason of this modification.

(c) Neither the contract amount nor the contract completion date is changed by reason of this modification.

(d) The contract amount is neither increased nor decreased by reason of this modification.

§ 3-7.5006 Contracts conditioned upon the availability of funds.

Use of the following clause is covered by the policy set forth in § 3-1.354.

AVAILABILITY OF FUNDS

Funds are not presently available for this procurement. The Government's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract can be made.

No legal liability on the part of the Government for payment of any money shall arise unless and until funds are made available to the Contracting Officer for this procurement and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

NOTE.—See § 3-1.354(b) for types of contracts which may be entered into conditioned upon availability of funds.

§ 3-7.5007 Government property clauses.

The standard Government property clauses are set forth in the Forms HEW-314, -315, -315A, and -316. Other Government property clauses are prescribed for use under various conditions as set forth in the following paragraphs.

§ 3-7.5007-1 Abandonment of Government property.

The following clause shall be used when deemed advisable by the contracting officer to abandon Government property on the contractor's premises (see § 3-56.508):

ABANDONMENT OF GOVERNMENT PROPERTY

The Government may abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease, and the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment of any Government property.

§ 3-7.5007-2 Government property furnished "as is."

The following clause shall be included in all contracts in which Government property is to be furnished "as is" in accordance with § 3-56.205:

GOVERNMENT PROPERTY FURNISHED "AS IS"

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation, or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available to him "as is." Such repair will be the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of such property, which remains vested in the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation, and such change will adversely affect the Contractor, the Contractor shall, immediately upon receipt of the property, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property, or (2) effect repairs to return the property to its condition when inspected under the solicitation, or if not inspected, when last available for inspection under the solicitation. Upon completion of (1) or (2) above, the Contracting Officer, upon written request of the Contractor, shall equitably adjust any contractual provisions affected by the return, disposition or repair, in accordance with the procedures provided for in the "Changes" clause of this contract. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the "Government Property" clause of this contract.

§ 3-7.5007-3 Use and charges clause for facilities contracts.

The policy on rental of Government Property is set forth in § 3-56.303 and the criteria for rental rates are prescribed in paragraph (b) of this section.

tracting Officer, has accounted for all of the property covered by any notice of termination of the use of property or until the Contractor has discharged his obligations under this contract with respect to such items, whichever last occurs.

§ 3-7.5007-5 Liability clause for facilities contracts.

The following clause shall be included in all facilities contracts.

LIABILITY FOR GOVERNMENT PROPERTY

(a) The Contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from:

(1) Willful misconduct, negligence, or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) All or substantially all of the Contractor's business; or

(ii) All or substantially all of the Contractor's operations at any one plant or separate location, in which the government property is installed or located.

(2) A failure, on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (1) above:

(i) To maintain and administer, in accordance with the clause of the contract entitled "Maintenance", a program for maintenance, repair, protection, and preservation of Government property; or

(ii) To take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection as reasonably necessary for the protection of the Government property.

(3) A risk for which the Contractor is otherwise responsible under the express terms of this contract;

(4) A risk expressly required to be insured pursuant to paragraph (c) of this clause, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(5) A risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided*, That if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exceptions.

(b) If the Contractor transfer Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract

shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(c) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include as an element of price or cost under any contract with the Government any amount on account of the cost of insurance (including self-insurance) against any form of loss or damage to Government property. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances, if so approved) as the Contracting Officer shall require or approve. Such insurance shall contain provision for thirty (30) days prior written notice to the Contracting Officer of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited promptly with said Contracting Officer. The Contractor shall, not less than thirty (30) days prior to the expiration of any insurance required by this contract be carried by the Contractor on the facilities, deliver to said Contracting Officer a certificate of insurance or a certified copy of each renewal policy to cover the same risks. The insurance shall be in the names of the United States of America, Department of Health, Education, and Welfare, the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the (insert the name of the appropriate HEW organization, e.g., OS-HEW, PHS-HEW, and so forth)."

(d) Upon the happening of any loss or destruction of or any damage to the property:

(1) The Contractor shall immediately notify the Contracting Officer thereof, and with the assistance of the Contracting Officer shall take all reasonable steps to protect the property from further damage, separate the damaged and undamaged property, arrange for inspection, and promptly furnish to the Contracting Officer (and in any event within thirty (30) days after the Contractor has determined that loss or destruction of, or damage to the property has occurred) the following:

(i) A list of the lost, destroyed, and damaged property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(2) The Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged Government property, or take such other actions as the Contracting Officer may direct in writing.

The Contractor shall perform its obligation under this paragraph (d) at Government expense, except to the extent that the Contractor is responsible for such damage, loss, or destruction under the terms of this

clause, and except as any damage, loss, or destruction is compensated by insurance.

(e) The Government is not obligated to replace or repair Government property which has been lost, destroyed, or damaged. In such event, the right of the parties to an equitable adjustment in delivery or performance dates, or price, or both, and in any other contractual condition of the related procurement contracts affected thereby shall be governed by the terms and conditions of such contracts.

(f) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability, the property shall be returned to the Government, or otherwise disposed of under the terms of this contract in as good condition as when received by the Contractor, as subsequently improved or as it should have been subsequently improved or maintained under the terms of this contract, less ordinary wear and tear.

(g) In the event the Contractor is indemnified, reimbursed, or otherwise compensated (excepting any portion of the proceeds, from use and occupancy or business interruption insurance, which represents indemnity for loss or profit, since the insurance premium for such indemnity is not to be borne directly or indirectly by the Government) for any loss or destruction of, or damage to, Government property, he, to the extent and as directed by the Contracting Officer shall:

(1) Use the proceeds to repair, renovate, or replace the property involved; or

(2) Pay such proceeds to the Government.

(h) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, Government property, and upon the request of the Contracting Officer shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

§ 3-7.5007-6 Examination of records clauses.

The clauses to be included in all facilities contracts relative to the examination of records are referenced in § 3-58.610

§ 3-7.5008 Incremental funding of cost-reimbursement research and development contracts.

If a contract is to be incrementally funded in accordance with §§ 3-50.602 and 3-50.603 of Subpart 3-50.6, insert the following clause:

LIMITATION OF FUNDS

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time

tion. The following clause will be used in all facilities contracts:

USE AND CHARGES

(a) The Contractor may use the facilities without charge in the performance of:

(1) Prime contracts with the Government which specifically authorize use without charge;

(2) Subcontracts held by the Contractor under Government prime contracts or subcontracts of any tier thereunder if the Contracting Officer having cognizance of the prime contract concerned has authorized use without charge by approving a subcontract specifically authorizing such use in writing; and

(3) Other work with respect to which the Contracting Officer has authorized use without charge in writing.

(b) Subject to the payment of a rental therefor, the Contractor may use all or part of the facilities in the performance of work other than that specified in paragraph (a) above, as authorized by the Contracting Officer or as specifically provided in the contract. The amount of rentals to be paid for the right to use the facilities under this paragraph (b) shall be determined in accordance with the following procedure.

(1) The following bases are or shall be established in writing for the rental computation prescribed in subparagraph (2) below in advance of any use of the facilities provided under this contract:

(i) The rental rates for the right to use the property shall be those established by the Contracting Officer in (insert reference) of this contract.

(ii) The acquisition cost of the property shall be the total cost to the Government, as determined by the Contracting Officer, of each item of property, including the cost of transportation and installation, if such costs are borne by the Government. When Government-owned special tooling or accessories are rented with any item of the property, the acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When any item of property has been modernized by substantial rebuilding at Government expense so as to enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer, that such rebuilding and modernization represent. The determination made by the Contracting Officer under this subparagraph shall be final and conclusive on the Contractor.

(iii) The rental period shall be not less than 1 month nor more than 6 months, as may be mutually agreed to.

(iv) For the purpose of computing any credit under subparagraph (2) below the measurement unit for determining the amount of use of the property by the Contractor shall be direct labor hours, sales, hours of use, or any other measurement unit which will result in an equitable apportionment of the rental charge, as may be mutually agreed to.

(2) The Contractor shall compute the amount of rentals to be paid for each rental period, using the bases established pursuant to subparagraph (1) above. The rental rates shall be applied to the acquisition cost of such of the property as may have been authorized for use in advance pursuant to this paragraph (b), for each rental period. The full charge for each rental period, so determined, shall be reduced by a credit in the

amount of such rental as would otherwise be properly allocable to work with respect to which the use of the property without charge is authorized in accordance with paragraph (a) above. Such credit shall be computed by multiplying the full rental period by a fraction whose numerator is the amount of use of the property by the Contractor without charge during such period, and whose denominator is the total amount of use of property by the Contractor during such period.

(3) The Contractor shall submit to the Contracting Officer within ninety (90) days after the close of each rental period a written statement of the use made of the property by the Contractor and the rental due the Government hereunder, and shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(4) If the Contractor fails to submit the statement within the prescribed ninety (90) day period, the Contractor shall be liable for the full rental for the period in question, subject to the exception stated in subparagraph (5) below.

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond the control and without the fault or negligence of the Contractor, the Contracting Officer shall grant the Contractor in writing a reasonable extension of time in which to make such submission.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the property to the performance of contracts and subcontracts of (insert name of Government agency) and shall not undertake any work involving the use of the property which would interfere with the performance of existing Government contracts or subcontracts.

(d) Concurrently with the submission of the written statement prescribed by paragraph (b)(3) above, the Contractor should pay the rental due the Government under this clause by check made payable to the HEW organization providing the property. The name of the HEW organization, to which the check should be made payable, should be indicated in the contract. Each check shall be mailed or delivered to the fiscal office designated in the contract. Receipt and acceptance by the Government of the Contractor's checks pursuant to this paragraph (d) shall constitute an accord and satisfaction of the final amount due the Government hereunder unless the Contractor is notified in writing within one hundred eighty (180) days following such receipt that the amount received is not regarded by the Government as the final amount due.

(e) If the Contractor uses any item of the property without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs. However, the Contracting Officer may waive the Contractor's liability for such unauthorized use if he determines that the Contractor exercised reasonable care to prevent such unauthorized use. In this latter event, the Contractor shall be liable only for the rental that would otherwise be due under this clause. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights

it may have against the Contractor growing out of the Contractor's unauthorized use of the property or any other failure to perform this contract according to its terms.

§ 3-7.5007-4 Maintenance clause for facilities contracts.

The following clause shall be included in all facilities contracts as specified by § 3-56.501.

MAINTENANCE OF GOVERNMENT PROPERTY

(a) Except as otherwise provided in the contract, the Contractor shall perform normal maintenance of the Government property in accordance with sound industrial practice, including protection, preservation, maintenance, and repair of the property, and with respect to equipment, normal parts replacement.

(b) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer in writing a proposed normal maintenance program, including an appropriate maintenance records system, in sufficient detail to show its adequacy as a normal maintenance program. To the extent that the Contracting Officer and the Contractor agree upon such a program, it shall become the normal maintenance obligation of the Contractor, and the Contractor shall carry it out in satisfaction of (1) his normal maintenance obligation under paragraph (a) above, and (2) his obligation to maintain records under paragraph (c) below.

(c) The Contracting Officer may at any time specify, by written notice to the Contractor, a reduction in the work required by the then current normal maintenance obligation of the Contractor. After receipt of such notice, the Contractor shall perform only such work as is specified therein. If any such notice causes a decrease in the cost of performing the normal maintenance obligation, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such decrease.

(d) The Contractor shall perform such maintenance work as may be directed by the Contracting Officer in writing. To the extent that such work is in excess of the Contractor's then current normal maintenance obligation under paragraph (a) through (c) above, such work shall be at Government expense. The Contractor shall notify the Contracting Officer in writing whenever, in accordance with sound industrial practice, the property requires any work in excess of such normal maintenance obligation.

(e) The Contractor shall keep records of the work done on the property in performing his obligations under this clause, and shall afford the Government adequate opportunity to inspect all such records. The Contractor shall deliver such records to the government or to third persons, if so directed by the Contracting Officer, whenever the property to which they relate are disposed of hereunder.

(f) The Contractor's obligation under this clause shall continue, with respect to each item of property, until such item is removed, abandoned, or otherwise disposed of, as authorized or directed in writing by the Contracting Officer, until the expiration of a period of ninety (90) days after the Contractor, in form satisfactory to the Con-

to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to any costs previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule the Contractor advises the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount

previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; unless the Contracting Officer issues a termination of other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

§ 3-7.5009 Examples of option articles.

Guidance on the use of option provisions is provided in Subpart 3-1.54, which applies to contracts for supplies and services other than research and development.

(a) Examples of option articles for fixed-price type contracts.

(1) An article substantially as follows may be used where the contract expresses the option quantity as a percentage of the basic contract quantity or as an additional quantity of a specific line item, without separate pricing of the option quantity.

OPTION FOR INCREASED QUANTITY

The Government may increase the quantity of supplies called for herein by any amount of units up to (specify a quantity or a percentage of the basic quantity) at the unit price specified in the contract. The Contracting Officer may exercise this option by giving written notice of the Government's exercise of the option of the Contractor not later than (specify a date certain or a number of days before the last delivery date under the basic contract). Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract (this sentence may be appropriately modified to reflect agreement of the parties on delivery terms).

(2) An article substantially as follows may be used where the contract identifies the option quantity as a separately priced line item having the same nomenclature as corresponding basic contract line item.

OPTION FOR INCREASED QUANTITY—LINE ITEM

The Government may increase the quantity of supplies called for herein by requiring the delivery of the numbered line items

identified in the Schedule or specified in Article — of the Special Provisions as an option item in the quantity and at the price set forth herein. The Contracting Officer may exercise this option by giving written notice of the Government's exercise of such option to the Contractor not later than (specify a date certain or a number of days before the last delivery date under the basic contract). Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract (this sentence may be appropriately modified to reflect agreement of the parties on delivery terms).

(3) An article substantially as follows may be used to provide for continuing performance of the contract beyond its original term.

OPTION TO EXTEND THE TERM OF THE CONTRACT

This contract may be extended for a period of — (days, months, years) at the option of the Government, by the Contracting Officer giving written of the Government's exercise of such option to the Contractor not later than the last day of the term of the contract; *Provided*, That such notice shall have no effect if given less than sixty (60) days prior to the last day of the term of the contract unless the Contracting Officer has given preliminary written notice of an intent to exercise such option at least sixty (60) days prior to the last day of the term of the contract (such preliminary notice shall not be construed as an exercise of the option, and will not bind the Government to exercise the option). If the Government shall be deemed to include this option provision: *Provided*, however, That the total duration of this contract, including the exercise of any options under this clause, shall not exceed — months. (State terms for pricing of performance under the option, e.g., by inclusion of same price as basic quantity, an escalation provision, definitive option price set forth elsewhere in this contract.

(b) Examples of option articles for cost-reimbursement contracts.

(1) The following may be used as the article which defines an option, when the contract is a Cost Only Term Form, not involving the use of task orders. This article may be used, with appropriate modifications, when the contract involves payment of fee.

OPTION TO EXTEND THE TERM OF THE CONTRACT

(a) At the option of the Government, this contract may be extended, by the Contracting Officer giving written notice of extension to the Contractor prior to the expiration date of this contract. The option may be exercised only if the Contracting Officer gives preliminary notice to the Contractor, not less than sixty (60) days prior to the last day of the term of this contract, of the Government's intention to exercise the option. Such preliminary notice shall not be construed as an exercise of the option, and will not bind the Government to exercise the option. If the Government exercises such option, the contract as extended shall be deemed to include this option provision; *Provided, however*, That the duration of

this contract, including the exercise of any options under this clause shall not exceed _____ months. (State terms for pricing of performance under the option, e.g., by inclusion of the same price as for the basic period, definitive option price set forth elsewhere in this contract, escalation provisions, etc.)

(b) In the event that the contract is extended in accordance with paragraph 1 of this Article, the Contractor shall continue the effort described in ARTICLE I—SCOPE OF WORK, during the _____ () month period immediately following that set forth in ARTICLE _____ PERIOD OF PERFORMANCE. The parties hereto agree that upon issuance of the order exercising this option, the following modifications will be made to the contract schedule in effect as of the date that such issuance is made:

(1) The period of performance specified in ARTICLE _____ PERIOD OF PERFORMANCE will be increased by _____ months.

(2) The estimated cost specified in ARTICLE _____ ESTIMATED COST will be increased by \$_____.

(2) The following may be used as the article which defines an option, where the contract is a CPFF Completion Form which contains a separate scope of work for the optional effort.

OPTION FOR INCREASED SCOPE OF WORK

(a) At the option of the Government, the Scope of Work of this contract may be increased to include the work set forth in (Exhibit _____) attached hereto and hereby made a part hereof. This option shall be exercised by the issuance of an order by the Contracting Officer citing the authority of this article. This option may be exercised at any time within (_____ months, days) from the effective date of this contract.

(b) The parties hereto agree that upon issuance of the order exercising this option, the following modifications will be made to the contract schedule in effect as of the date such issuance is made:

(1) ARTICLE I—SCOPE OF WORK will be modified to incorporate (Exhibit _____) attached hereto, into this contract.

(2) The period of performance specified in ARTICLE _____ PERIOD OF PERFORMANCE will be increased by _____ (months, days).

(3) The Estimated Cost, Fixed Fee, and Total Cost-Plus-A-Fixed Fee specified in ARTICLE _____, will be increased by \$_____, \$_____, and \$_____, respectively.

(3) The following may be used as the article which defines an option, when the contract is a Cost-Plus-A-Fixed Fee (CPFF) Term Form involving the issuance of task orders.

OPTION TO EXTEND THE TERM OF THE CONTRACT

(a) At the option of the Government, this contract may be extended by the Contracting Officer giving written notice of extension to the Contractor prior to the expiration date of this contract: *Provided*, That such notice shall have no effect if given less than sixty (60) days prior to the last day of the term of the contract unless the Contracting Officer has given preliminary notice of the Government's intention to extend at least sixty (60) days before this contract is to expire. (Such a preliminary

notice will not be deemed to commit the Government to renewals.)

(b) If this option is exercised, the Contractor shall provide approximately _____ man-hours of additional direct labor in pursuit of the effort described in ARTICLE I—SCOPE OF WORK, during the _____ () month period immediately following that set forth in ARTICLE _____ PERIOD OF PERFORMANCE. The parties hereto agree that upon issuance of the order exercising this option, the following modifications will be made to the contract schedule, in effect as of the date that such issuance is made:

(1) The period of performance specified in ARTICLE _____ PERIOD OF PERFORMANCE, will be increased by _____ () months.

(2) ARTICLE _____ LEVEL OF EFFORT, will be increased from "approximately _____ manhours" to "approximately _____ manhours" and the last sentence of Paragraph A will be changed to read "not less than _____ nor more than _____ manhours."

(3) The Estimated Cost, Fixed Fee, and Total Cost-Plus-A-Fixed Fee specified in ARTICLE _____ will be increased by \$_____, \$_____, and \$_____, respectively.

(4) The period of performance article (shown in Paragraph (b) of each preceding clause) may be adjusted to conform to the requirements. Additional optional periods may be included beyond the first option period; however, consideration shall be given to the prohibitions referenced in §3-1.5402(b).

§3-7.5010 Cost sharing.

(a) The policy relative to cost-sharing is set forth in §3-3.405-3. Cost sharing can be individually negotiated for a specific contract or it can be in accordance with a previously negotiated institutional agreement.

(b) In contracts for which cost sharing has been individually negotiated, the clause set forth in §1-7.402-2(b) shall be used. Also, an article substantially as follows, which includes a cost-sharing formula agreed upon by the contracting officer and the contractor that provides for the ratio of cost-sharing for both the originally established estimated cost and any increase pursuant to paragraph (b) of that clause, shall be included in the contract.

COST SHARING

The Contractor agrees to share in the cost of the work hereunder to the extent of not less than (Indicate percent of the total cost or dollar amount, etc.) and shall maintain records of all costs so contributed, as well as costs to be paid by the Government. Such records shall be subject to audit. Costs contributed by Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(c) In contracts for which cost-sharing will be in accordance with a previously negotiated institutional agreement, the clause set forth in §1-7.402-

2(b) shall be used. Instead of specifying a cost-sharing formula, the following language shall be included as a special provision.

COST SHARING UNDER INSTITUTIONAL AGREEMENT

This contract is subject to an Institutional Cost-Sharing Agreement which became effective with respect to HEW research contracts on _____, and the Contractor agrees

(date)

that the Government shall not bear the entire cost of the work hereunder.

(d) For contracts which are to be incrementally funded and provide for cost-sharing, the clause set forth in 1-7.402-2(d) shall be used.

§3-7.5011 Use of GSA supply sources by contractors performing cost reimbursement type contracts.

Subpart 3-5.9 prescribes the policies and procedures for allowing contractors to utilize GSA supply sources. When the contractor will be authorized to use GSA supply sources, the following clause shall be included in the contract.

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government, (1) unless otherwise specifically provided in the contract, (2) unless otherwise provided in the Government Property clause of this contract, or (3) in the absence of both the conditions in (1) and (2) of the clause. However, such property shall not be considered to be "Government-furnished property."

§3-7.5012 Procurements involving human subjects.

The policy and procedures to be followed whenever individuals may be at risk as a consequence of participation as subjects in research, development, demonstration, or other activities being conducted under a contract are provided in Subpart 3-4. 55. The following clause shall be included in contracts involving human subjects:

PROTECTION OF HUMAN SUBJECTS

(a) The Contractor agrees that the rights and welfare of human subjects involved in performance of this contract will be protected in accordance with procedures specified in its current Institutional Assurance on file with the Office for Protection from Research Risks, NIH, HEW. The Contractor further agrees to provide certification at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the applicable Institutional Assurance accepted by the Office for Protection from Research Risks, NIH, HEW.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. No provision of this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, agent or employee of the Contractor, or any other person, organization, institution, or group to any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

§ 3-7.5013 Contracts under the Indian Self-Determination Act.

Contracts awarded pursuant to the terms of the Indian Self-Determination Act (25 U.S.C. 405(f)) shall contain the clauses set forth in §§ 3-4.6013 and 3-4.6014.

§ 3-7.5014 Negotiated procurements under the Buy Indian Act.

Contracts negotiated pursuant to the terms of the Buy Indian Act shall include the applicable general provisions, Forms HEW-314, -315, -315A or -316, and clauses required by Subpart 3-4.57. Subcontracts negotiated under this authority must also contain the clauses prescribed by Subpart 3-4.57.

§ 3-7.5015 Contracts made pursuant to any Act authorizing awards to or for the benefit of Indians or Indian organizations.

The clauses set forth below shall be included in all contracts or subcontracts made pursuant to any Act authorizing Federal contracts with Indian organizations or for the benefit of Indians as required by Section 7(b) of Public Law 93-638, the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

(a) Indian Preference in Training and Employment clause.

INDIAN PREFERENCE IN TRAINING AND EMPLOYMENT.

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

(b) Use of Indian Business Concerns clause.

USE OF INDIAN BUSINESS CONCERNS

(a) As used in this clause, the term "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 CFR § 36.204(i).

(b) The Contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The Contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in § 1-1.710-3(b), § 1-1.805-3(b) and § 1-1.1310-2(b) respectively of the Federal Procurement Regulations (41 CFR Chapter 1).

§ 3-7.5016 Insurance—liability to third persons.

(a) Indemnification authority of the Department derives from 42 U.S.C. 241(g), which authorizes indemnification of research contractors of the Public Health Service against third party liability only in cases of exceptionally hazardous risk in accordance with and subject to 10 U.S.C. 2354. Before such action can be undertaken, a determination and findings (see § 3-75.104-1(b)) shall be prepared and submitted as prescribed in Subpart 3-3.303-50(b).

(b) The clause set forth in paragraph (d) below can be used in any Department contract when a determination has been made to insure a contractor against unusually hazardous risks. However, before it can be included in a contract, the approval of the Director, Division of Procurement Policy and Regulations Development, OGP, must be obtained.

(c) All requests to use the clause shall be in writing and must include the following:

- (1) Name of proposed contractor.
- (2) A description of the work to be performed.
- (3) What efforts the proposed contractor has made to obtain the necessary insurance.
- (4) What hazardous risks the proposed contractor is being asked to undertake.
- (5) If there is any other organization which can perform the required work and services and does not require the inclusion of the Insurance—Liability to Third Persons clause in the resultant contract.
- (d) When authorized, the following clause shall be used:

INSURANCE—LIABILITY TO THIRD PERSONS

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract: *Provided*, That the Contractor may with the approval of the Contracting Officer maintain a self-insurance program: *And provided further*, That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time as the Contracting Officer may from time to time require or approve and with the insurers approved by the Contracting Officer. Insurance procured pursuant to the provisions of this clause shall not be cancelled, nor materially changed, without the express prior approval of the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed (1) for the portion allowable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (2) without regard to and as an exception to the "Limitation of Cost" or the "Limitation of Funds" clause of this contract, for liabilities to third persons for loss of or damage to property (other than property (i) owned, occupied, or used by the Contractor or rented to the Contractor, or (ii) in the care, custody, or control of the Contractor), for liability to subcontractors pursuant to "Insurance—Liability to Third Parties" clauses in subcontracts approved by the Contracting Officer, or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, his agents, servants, or employees: *Provided*, Such liabilities are represented by final judgments, or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (A) for which the Contractor is otherwise responsible under the express terms of the clause or

clauses, if any, specified in the Schedule, or (B) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer, unless the Contractor has been unable to acquire such insurance after good faith attempts to obtain same, or (C) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (aa) all or substantially all of the Contractor's business or (bb) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (cc) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause: *Provided*, Such cost would constitute allowable cost under the clause of this contract entitled "Allowable Cost, Fixed-Fee, and Payment," of "Allowable Cost and Payment."

The Government's liability under this clause shall in no event exceed the appropriations available at the time of the losses and nothing in this contract shall be construed to imply that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any claim and to represent the Contractor in or take charge of any litigation in connection therewith: *Provided, however*, That the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 3-7.5017 Method of payment—letter of credit.

When authorized by an individual or blanket determination, findings and authorization for advance payment, under a letter of credit, delete the clause of the contract entitled "Allowable Cost and Payment" and substitute the following: (See § 3-30.104-1 for further instructions regarding use of the clause.)

METHOD OF PAYMENT—LETTER OF CREDIT

(a) The Contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No. —, established by —, Department of Health, Education, and Welfare, against which the Contractor will withdraw funds pursuant to prescribed Federal Reserve Letter of Credit procedures, as contained in Treasury Department Circular 1075 (31 CFR Part 205).

(b) At the request of the Contractor and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made: (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (g)(2) as to the financial necessity therefore (except in the case of educational institutions); (2) in an amount which together with all advance payments theretofore made, shall exceed the contract amount, and (3) without a properly certified invoice or invoices. The Contractor shall (1) initiate cash drawdowns only when actually needed for its disbursements, (2) report timely the cash disbursements and balances as required by the Administering Office, and (3) impose the same standards of timing and amount upon any subcontractors including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered an event under paragraph (f) of this clause.

(c) The funds drawn by the Contractor against the Federal Reserve Letter of Credit referred to above shall be only for current allowable expenditures necessary for the performance of this contract.

(d) When so requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of the advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs or in excess of the contract price.

(e) If upon the completion or termination of this contract, all amounts obtained by the Contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(f) Upon the happening of any of the following events of default: (1) a finding by the Administering Office that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provisions of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the contractor; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of

an act of bankruptcy; the Government, without limiting any rights it may otherwise have, may, in its discretion and upon written notice to the Contractor withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Payment can also be stopped for lack of submission of timely and accurate reports in accordance with contract requirements. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41, 80 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; and/or

(3) Take possession of and, with or without advertisement, sell at public sale at which the Government may be purchaser, or at a private sale, all or any part of the property on which the Contractor has a lien under this contract and, after deducting any expenses incident to such sale, apply the proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(g)(1) No interest shall be charged for advance payments made hereunder, except interest during a period of default as provided in paragraph (f)(2). The Contractor shall charge interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 85 Stat. 97 for the Renegotiation Board on subadvances or downpayments to subcontractors and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontractors with educational or research institutions provided such subcontracts are awarded on a no profit or fee basis and for research, development or experimental work.

(2) The office administering advance payments is designated as—

(h) For the performance of this contract, the Government shall pay the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with: (i) 45 CFR 74 Appendix E for hospitals; 45 CFR 74 Appendix F for non-profit institutions; 41 CFR 1-15.7 for state and local government agencies; and 41 CFR 1-15.3 for educational institutions as in effect on the date of this contract; and

(2) In accordance with the terms of this contract:

(i) For the purpose of determining amounts to be advanced under this contract, costs previously incurred shall only include those recorded costs which result, at the time of requests for further advances, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid for materials which have been issued from the Contractor's stores inventory and production process for use on this contract, for direct

labor, for direct travel, for other direct in-house costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for purposes of obtaining advances under this contract until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30 day period, pension contribution costs shall be excluded from indirect cost for payment purposes of obtaining advances under this contract until payment has been made.

(J) The Contractor shall submit an invoice or a voucher designated as the "Completion Invoice" or "Completion Voucher" promptly following completion of the work under this contract but in no event later than 1 year (or such longer time as the Contracting Officer may in his discretion approve in writing) from the date of such completion. The Contracting Officer can direct that a final report of expenditures be included with the completion invoice or voucher.

(k) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allowable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible for exact statements by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *Provided, however,* That such claims are not known to the Contractor on the date of the execution of the release, and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date

of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

§ 3-7.5018 Alternate authorization and consent clause.

The following clause shall be used whenever the contract is for supplies and services and not for experimental, developmental or research work:

AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent (without prejudice to any rights or indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

§ 3-7.5019 Patent indemnity clause.

(a) A patent indemnity clause is not required to be included in any contract but can be incorporated if the contracting officer deems it necessary.

(b) Such a clause may only be utilized:

(1) When the contract amount is more than \$10,000;

(2) The contract is for supplies which normally are or have been sold or offered for sale to the public in the commercial open market or which are the same as such supplies with a relatively minor modification thereto; and

(3) When the Authorization and Consent clause that is included in the General Provisions (Form HEW-314, -315, -315A, or -316) is included in the Contract unless the contract is for supplies of the kind described in paragraph (b)(2) above.

(c) The following Patent Indemnity clause shall be used in accordance with paragraphs (a) and (b) above.

PATENT INDEMNITY

The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further such indemnity shall not apply to: (i) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(For the purpose of excluding from patent indemnification such items as normally are not or have not been sold or offered for sale by any supplier to the public in the open market, the following sentence may be added to the end of the clause: (The foregoing shall not apply to the following items: (list the items to be excluded).))

§ 3-7.5020 Alternate rights-in-data clauses.

§ 3-7.5020-1 Rights in Data—Special Works.

The clause set forth below shall be used instead of the clause in Forms HEW-314, -315, -315A, and -316 whenever the contract is (1) primarily for the production of motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (2) for histories of the Department; (3) for work pertaining to training or career guidance; or (4) for works pertaining to the instruction or guidance of Government employees in the performance of their official duties. The clause shall also be used, after it has been appropriately modified, in contracts which provide for the modification of existing motion pictures or television recordings through editing, translation, or the addition of subject matter. However, all proposed modifications of the clause must have the

approval of the Director, Division of Procurement Policy and Regulations Development (DPPRD-OGP). The clause is as follows:

RIGHTS IN DATA—SPECIAL WORKS

(a) The term "Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphic representations, and works of similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All Data first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole or in part or in any manner or form, or authorize others to do so, without the written consent of the Government until such time as the Government may have released such Data to the public.

(c) The Contractor hereby grants to the Government a royalty-free, nonexclusive and irrevocable license throughout the world (i) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all Data which is not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract, and (ii) to authorize others to do so.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any Data furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in such Data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent. (f) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract, *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

§ 3-7.5020-2 Rights in Data—Existing Work.

(a) The clause set forth below shall be added to the Standard Form 32, General Provisions, whenever the procurement is exclusively for existing motion pictures or television recordings. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations are means of exhibition or transmission, time, and type of audience and geographical location. If the clause is modified, paragraph (b) should be changed to make the indemnity equal with the rights ac-

quired under paragraph (a) of the clause.

(b) Any questions concerning any proposed modifications of the clause should be addressed to the Director, Division of Procurement Policy and Regulations Development, OGP.

The clause is as follows:

RIGHTS IN DATA—EXISTING WORKS

(a) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to distribute, use, and exhibit the material called for under this contract for Government purposes throughout the world, and to authorize others so to do.

(b) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the distribution, use, or exhibition of any material furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in said material.

§ 3-7.5021 Maximum allowable cost for drugs.

The following clause, or one reading substantially as follows, shall be included in all contracts subject to the provisions of the Maximum Allowable Cost regulation and § 3-4.6104.

MAXIMUM ALLOWABLE COST FOR DRUGS

(a) Reimbursement for drugs provided or used under this contract shall be in accordance with the Maximum Allowable Cost (MAC) regulation set forth in 45 CFR Subtitle A, Part 19. In accordance with § 19.3 of the MAC regulation, the amount which is recognized for reimbursement or payment purposes for any drug purchased under the terms of the contract shall not exceed the lowest of:

(1) The maximum allowable cost of the drug, if any, established in accordance with § 19.5 of the MAC regulation plus a reasonable dispensing fee;

(2) The acquisition cost of the drug plus a reasonable dispensing fee; or

(3) The provider's usual and customary charge to the public for the drug; *Provided*, That:

(i) The maximum allowable cost established for any drug shall not apply to a brand of that drug prescribed for a patient which the prescriber has certified in his own handwriting is medically necessary for that patient; and *Provided, further*, That:

(ii) When compensation for drug dispensing is included in some other amount payable to the provider by the reimbursing or payment program agency, a separate dispensing fee will not be recognized.

(b) The Contractor agrees:

(1) To include the following solicitation notification in all applicable solicitations issued under this contract and to ensure that subcontractors include it in any subsequent applicable solicitations:

This procurement is subject to the Maximum Allowable Cost (MAC) regulation set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(2) To include this clause, including this paragraph (b), in all applicable subcontracts, regardless of tier, awarded pursuant to this contract.

(3) To include the furnished MAC determination or acquisition cost data in all applicable solicitations issued under this contract and in all resultant subcontracts awarded pursuant to this contract.

§ 3-7.5022 Withholding of contract payments.

The following clause is to be included in all solicitations, resultant contracts, and contract modifications effecting supplemental agreements as specified in § 3-57.104-3(a):

WITHHOLDING OF CONTRACT PAYMENTS

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due, or failure to perform or deliver required work, supplies, or services, will result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled "Excusable Delays," "Default," "Termination," or "Termination for Default," as applicable. The Government shall promptly notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

§ 3-7.5023 Excusable delays.

The following clause is to be included in solicitations and contracts (and contract modifications effecting supplemental agreements) as specified in § 3-57.104-3(b)(3).

EXCUSABLE DELAYS

Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of

the Government under the termination clause hereof. (As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

§ 3-7.5034 Statement of Cost and Personnel Responsible for Reports.

The contracting officer shall include the following clause in every contract for consultant services as defined in the General Administration Manual, Chapter 8-15:

STATEMENT OF COST AND PERSONNEL RESPONSIBLE FOR REPORT

The Contractor shall set forth on the cover of each report submitted pursuant to this contract (except progress reports incidental to the performance of the work) a statement as follows, with the indicated number, amount, and names filled in:

This report is made pursuant to contract No. —. The amount charged to the Department of Health, Education, and Welfare for the work resulting in this report (inclusive of the amounts so charged for any prior reports submitted under this contract) is \$—. The names of the persons, employed or retained by the Contractor, with managerial or professional responsibility for such work, or for the content of the report, are as follows:

The Contractor shall exercise due care to cause the above quoted statement to be accurate.

§ 3-7.5025 Additional payment provision.

The following clause is to be included in all solicitations and resultant contracts for construction which contain the "Payments to Contractor" clause set forth in § 1-7.602-7:

ADDITIONAL PAYMENT PROVISION

Unless otherwise stated in this contract, there will be taken into consideration in computing progress payments material that will be incorporated into the structure if such material is delivered at the site, or is delivered to the Contractor and properly stored by him in a suitable warehouse, storage yard, or similar place either (a) within 25 miles of the site or (b) as otherwise approved by the Contracting Officer. Before each such payment is made, the Contractor shall furnish to the Contracting Officer such evidence as he may require of the quantity and value of such material and that it will be incorporated into the structure. If such material is stored off the site, the Contractor shall also furnish to the Contracting Officer, before payment, properly executed bills of sale to the Government for the delivered material upon which such payment is to be made.

PART 3-16 PROCUREMENT FORMS

The existing Subpart 3-16.50 is deleted in its entirety, and the following substituted:

Subpart 3-16.50—Forms for Negotiated Procurement

- Sec.
3-16.5000 Scope of subpart.
3-16.5001 [Reserved.]

- Sec.
3-16.5002 Contract forms.
3-16.5002-1 Negotiated Contract (Form HEW-554).
3-16.5002-2 Contents of Contract (Form HEW-555).
3-16.5002-3 Special Provisions (Form HEW-556).
3-16.5002-4 General Provisions.
3-16.5002-5 Standard Form 30, Amendment of Solicitation/Modification of Contract.
3-16.5002-6 Instructions Applicable to Title Provisions of Government Property Clause in Forms HEW-314, -315, and -315A.
3-16.5002-7 Form HEW-315A Revisions.
3-16.5003 Additions, Modifications, and Substitutions to General Provisions.
3-16.5004 Availability of Forms.

Subpart 3-16.50—Forms for Negotiated Procurement

§ 3-16.5000 Scope of subpart.

(a) This subpart prescribed forms to be used in procuring:

- (1) Supplies, equipment, and services by negotiation when authorized under Subpart 3-3.2;
- (2) Experimental, developmental or research work and related services and property; and
- (3) The conduct of studies or surveys.

(b) Excluded from the scope of this subpart are:

- (1) Purchases that do not exceed \$10,000—small purchases—(See Subparts 1-3.6 and 3-3.6);
- (2) Contracts for the construction, alteration, or repair of buildings, bridges, roads, or other real property (See Subpart 1-16.4) or the leasing of real property (See Subpart 1-16.6);
- (3) Contracts for the procurement of architect-engineer professional services by negotiation (See Subpart 1-16.7).

§ 3-16.5001 [Reserved.]

§ 3-16.5002 Contract forms.

§ 3-16.5002-1 Negotiated Contract (Form HEW-554).

Negotiated Contract, Form HEW-554, is the cover page of the contract and must be executed to reflect mutual agreement by the contracting parties (See § 3-16.950-554).

§ 3-16.5002-2 Contents of Contract (Form HEW-555).

Contents of Contract, Form HEW-555, shall be used to list the contents of the contract including applicable "Special Provisions" by article number and name, and "General Provisions" (Forms HEW-314, -315, -315A, -316) which are appropriate to the type of contract consummated (See § 3-16.950-555).

§ 3-16.5002-3 Special Provisions (Form HEW-556).

Each contract shall include a section headed "Special Provisions" (Form HEW-556 is optional for this purpose) to describe the scope of work, schedule, special terms, and conditions, and any additions, modifications, or substitutions, to General Provisions, if any, as authorized by § 3-7.50. (See § 3-16.950-556).

§ 3-16.5002-4 General Provisions.

(a) The following procedures are applicable to the incorporation of General Provisions into Request for Proposals (RFP's) and contracts by reference.

(1) *Request for proposals (RFP's).* Copies of the contract General Provisions will no longer be included in RFP's. The synopsis to be published in the Commerce Business Daily and the resultant RFP will include a statement identifying the contract General Provisions to be used (Form HEW-314, -315, -315A, or -316) and will state an address where a copy of the General Provisions may be obtained by the prospective offeror.

(2) *Contractual documents.* Copies of the contract General Provisions will be attached to only those contractual documents that have special significance; i.e., the contractor's copy and the official contract file copy.

(b) The following are the applicable General Provisions to be used in contracts covered by this Subpart 3-16.50.

(1) Form HEW-314 (Rev. 9/76) General Provisions for Negotiated Fixed-Price Research and Development Contract. It is noted that, with the deletion of Clause 17, "Patent Rights," and the substitution of the alternate Authorization and Consent clause, the form should be used with other types of nonpersonal services contracts, e.g., studies, surveys, and demonstrations in socio-economic areas.

(2) Form HEW-315 (Rev. 7/76), General Provisions for Negotiated Cost-Reimbursement Type Contract with Educational Institutions.

(3) Form HEW-315A (Rev. 7/76), General Provisions for Negotiated Cost-Reimbursement Type Contract with Nonprofit Institutions Other Than Educational Institutions.

(4) Form HEW-316 (Rev. 7/76), General Provisions for Negotiated Cost-Plus-A-Fixed Fee Type Contract.

§ 3-16.5002-5 Standard Form 30, Amendment of Solicitation/Modification of Contract.

Modifications of existing contracts shall be accomplished by the use of change orders and/or supplemental agreements. Standard Form 30, Amendment of Solicitation/Modification of Contract, may be used for these purposes (See § 1-16.901-30 for illustration of form).

§ 3-16.5002-6 Instructions Applicable to Title Provisions of Government Property Clause in Forms HEW-314, -315, and -315A.

(a) The following instructions are applicable relative to the Title Provisions contained in Clause 11, Government Property, of Forms HEW-315 and -315A.

(1) Research contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research shall provide for the transfer to contractors of title to each item of equipment having an acquisition cost of less than \$1,000 which was purchased with funds available for research, if approval of the contracting officer is given to the contractor to obtain such property in accordance with HEWPR 3-56.3 (See subparagraph (c)(2) of the Government Property Clause of Forms HEW-315 and -315A.)

(2) Subparagraph (c)(3) of the Government Property Clause provides that title to equipment costing \$1,000 or more that was purchased with research funds shall vest as set forth in the contract. Title to equipment having an acquisition cost of \$1,000 or more may:

(i) Vest in the institution subject to a right of the Government to direct vesting of title in the Government or a third party within twelve (12) months after termination or completion of the contract under which the equipment was acquired; or

(ii) Vest in the Government when it is determined that vesting of title in the contractor under (i) above would not be in the furtherance of the Department's research objectives.

(3) Applying subparagraphs (c)(2) and (c)(3) of Clause 11, Government Property, the contracting officer must determine whether the contract is for scientific research and is with a nonprofit institution of higher learning or a nonprofit institution whose primary purpose is the conduct of scientific research. If this determination is made, one of the following provisions must be included in the special provisions of the contract.

(i) *Title to Equipment Acquired Under the Contract With Contract Funds.* (Application of Clause 11, Government Property, subparagraphs (c)(2) through (c)(5).) This contract is for scientific research and is with a nonprofit institution of higher education or with a nonprofit institution whose primary purpose is the conduct of scientific research. Therefore, pursuant to subparagraph (c)(2) of Clause 11, Government Property, title to equipment having an acquisition cost of less than \$1,000 shall vest in the Contractor. Title to equipment having an acquisition cost of \$1,000 or more

purchased with funds made available under the contract shall vest in the Contractor subject to the provisions of Clause 11, Government Property; *Provided*, that the Government may direct transfer of the title to the Government or to a third party within twelve months after completion or termination of the contract. The transfer of title to such equipment to the Government or to a third party shall not be the basis for any claim against the Government by the Contractor.

(ii) *Title to Equipment Acquired Under the Contract with Contract Funds.* (Application of Clause 11, Government Property, subparagraphs (c)(2) through (c)(5).) This contract is for scientific research and is with a nonprofit institution of higher education or with a nonprofit institution whose primary purpose is the conduct of scientific research. Therefore, pursuant to subparagraph (c)(2) of Clause 11, Government Property, title to equipment having an acquisition cost of less than \$1,000 shall vest in the Contractor. Title to equipment having an acquisition cost of \$1,000 or more purchased with funds available under the contract shall vest in the Government.

(4) When the contracting officer has determined that a contract with an educational institution does not provide for scientific research or is not with a nonprofit institution whose primary purpose is the conduct of scientific research, the following must be added as a special provision.

(i) *Title to Equipment Acquired Under the Contract with Contract Funds.* The provisions of subparagraphs (c)(2) through (c)(5) of Clause 11, Government Property, shall not apply to this contract. Title to all equipment acquired with contract funds shall vest in the Government.

(b) Paragraph (iii) of Clause 12, Government Property, in the revised Form HEW-314 sets forth the Government Property clause to be used when the contract is without a fee or profit and is with an educational or nonprofit institution. In applying the provisions of subparagraphs (c)(2) through (c)(5) of Clause 12 the contracting officer must determine whether the contract is for scientific research and is with a nonprofit institution whose primary purpose is the conduct of scientific research. When this determination is made the procedures set forth in paragraphs (3) or (4) above must be followed.

§ 3-16.5002-7 Form HEW-315A Revision.

The Form HEW-315A shall be utilized with the following modifications. Whenever a contract with a nonprofit institution provides for the payment of a fixed fee:

a. Delete Clause 14, Termination for the Convenience of the Government, and substitute the clause entitled "Termination for Default or for the Convenience of the Government" (See FPR 1-8.702 for the next text of this clause).

b. Add a clause entitled "Excusable Delays" (See FPR 1-8.708 for the text of this clause).

c. Delete Clause 4, Allowable Cost and Payment, and substitute the clause entitled "Allowable Cost, Fixed Fee and Payment" (See FPR 1-7.202.4 for the text of this clause).

However, the following paragraph (a) shall be used instead of the paragraph set forth in the FPR.

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) 45 CFR Part 74, Appendix F;

(ii) The terms of the contract; and

(2) Such fixed fee, if any as may be provided for in the schedule.

d. Delete the last sentence of Clause 27, Federal Reports Act, and substitute the following:

Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with Clause, ———, Excusable Delays.

§ 3-16.5003 Additions, Modifications, and Substitutions to General Provisions.

Contracting officers shall include additional clauses or substitute alternate clauses for those included in the four General Provisions (Forms HEW-314-316) in accordance with applicable instructions in § 3-7.50 and the FPR. Written deviation requests shall be submitted, through procurement channels, to the Director, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement (DPPRD-OGP), Office of the Assistant Secretary for Management and Budget, Office of the Secretary (OASMB-OS). The Director, DPPRD-OGP will inform the contracting officer through procurement channels, of the disposition of the request. In the event expeditious action is required, contracting officers are authorized to request oral or written approval directly from the Director, DPPRD-OGP, who will notify the contracting officer of the disposition of the request.

§ 3-16.5004 Availability of Forms.

The forms prescribed by this Subpart are available through normal requisitioning channels.

PARTS 3-1, 3-3, 3-4, 3-5, 3-11, 3-30, 3-50
and 3-56 [AMENDED]

MISCELLANEOUS AMENDMENTS

Miscellaneous amendments are required to provide for the consolidation of the various additional contract clauses into Subpart 3-7.50. The optional clauses are deleted from the other subparts of the regulation and the appropriate references are cited as follows:

§ 3-1.5205. [Amended]

(1) In subpart 3-1.52, Safety and Health, under § 3-1.5205, Contract clause, the last sentence in paragraph (a) is revised to read:

The clause set forth in § 3-7.5002 may be appropriately modified to meet the needs of the individual contract.

Paragraph (b) is deleted in its entirety.

§ 3-30.104-1 [Amended]

(2) In Subpart 3-30.1, Forms of Financing, under § 3-30.104-1, Letters of Credit, the last sentence in paragraph (a) is revised to delete the reference to § 3-7.5007 and substitute § 3-7.5017.

§ 3-11.350-3 [Amended] and § 3-11.350-4 [Deleted]

(3) In Subpart 3-11.3, State and Local Taxes; (a) under § 3-11.350-3, North Carolina sales and use taxes, paragraph (d), Contract clause, is revised to delete the clause and the first sentence is amended to delete the words "The clause set forth below * * *" and substitute; "The clause set forth in § 3-7.5004 * * *"; and (b) § 3-11.350-4, Iowa sales and use taxes, is deleted in its entirety.

§§ 3-1.354 and 3-1.355 [Amended]

(4) In Subpart 3-1.3, General Policies; (a) under § 3-1.354, Contracts conditioned upon the availability of funds, paragraph (c), Contract clause, is deleted in its entirety and the following is substituted:

(c) *Solicitation notice and contract clause.* The clause set forth in § 3-7.5006 shall be inserted in all solicitations and resultant contracts.

and (b) § 3-1.355, Federal Reports Act of 1942, is amended to delete paragraph (c).

§ 3-50.604 [Amended]

(5) In Subpart 3-50.6, Incremental Funding of Cost-Reimbursement, Research and Development Contracts, under § 3-50.604, Procedures, paragraph (b)(2) is revised to delete the Limitation of Funds clause and the second sentence is amended to read:

The General Provisions clause is set forth in § 3-7.5008.

§ 3-1.5400 [Amended]

(6) In Subpart 3-1.54, Options:

(a) Under § 3-1.5400, Scope of subpart, paragraph (c), the reference to § 3-1.5406 in the last sentence is deleted and § 3-7.5009 is substituted;

(b) § 3-1.5405 is deleted in its entirety and the following substituted:

§ 3-1.5405 Examples of option articles for fixed-price contracts:

Option articles for fixed-price type contracts are set forth in § 3-7.5009(a).

(c) § 3-1.5406 is deleted in its entirety and the following is substituted:

§ 3-1.5406 Examples of option articles for cost-reimbursement type contracts:

Option articles for cost-reimbursement type contracts are set forth in § 3-7.5009(b).

(7) In Subpart 3-3.4, Types of Contracts, § 3-3.405-3(g), Contract clauses, is deleted in its entirety and the following is substituted:

§ 3-3.405-3 Cost-sharing contract.

(g) *Contract clauses.* Clauses for cost sharing in individually negotiated contracts or cost sharing under institutional agreements are set forth in § 3-7.5010.

§ 3-5.950 [Amended]

(8) In Subpart 3-5.9, Use of GSA Supply Sources by Contractors Performing Cost-Reimbursement Type Contracts, the clause set forth in § 3-5.950 is deleted; the words in the first sentence which read "the following clause * * *" are changed to "The clause set forth in § 3-7.5011 * * *"; and the second sentence of that paragraph, which begins with "The last sentence * * *" is deleted.

§ 3-4.6010. [Amended]

(9) In Subpart 3-4.60, Contracts Under the Indian Self-Determination Act, § 3-4.6010, Use of General Services Administration supply sources, the clause set forth therein is deleted; the following is substituted for the first three words of the second sentence: "The clause set forth in § 3-7.5011 * * *"; and the colon following " * * * GSA supply sources:" in that paragraph is deleted and a period is substituted.

(10) In Subpart 3-4.55, Procurements Involving Human Subjects, § 3-4.5505, Contract clause, is deleted in its entirety and the following is substituted:

§ 3-4.5505. Contract Clause.

The clause set forth in § 3-7.5012 shall be inserted in all contracts involving human subjects.

(11) In Subpart 3-4.57, Negotiated Procurement Under the Buy Indian Act, under § 3-4.5703, Requirements, paragraph (c), *Indian employment*, is deleted in its entirety and the following is substituted:

§ 3-4.5703 Requirements.

(c) *Indian employment.* Contracts negotiated under the Buy Indian Act shall include the clause set forth in § 3-7.5015(a).

and in § 3-4.5703, paragraph (e), *Subcontracting*, is revised by deleting the clause entitled "Use of Indian Business Concerns" and by changing the last sentence to read: "Each prime contract shall incorporate the clause set forth in § 3-7.5015(b)."

(12) In Subpart 3-56, Government Property, the following changes are made:

a. § 3-56.605 is deleted and the following substituted:

§ 3-56.605 Abandonment of Government property clause.

The clause set forth in § 3-7.5007-1, Abandonment of Government Property, shall be used whenever the contracting officer deems it advisable to abandon Government property on the contractor's premises (See § 3-56.508).

b. § 3-56.606 is deleted and the following substituted:

§ 3-56.606. Clause for Government property furnished "as is."

The clause set forth in § 3-7.5007-2, Government Property Furnished "as is", shall be included in all contracts in which Government property is to be furnished in an "as is" condition in accordance with § 3-56.205.

c. § 3-56.607(a) is deleted and the following substituted:

§ 3-56.607 Use and charges clause for facilities contracts:

(a) The "Use and Charges" clause for use in all facilities contracts is set forth in § 3-7.5007-3.

d. § 3-56.608 is deleted and the following is substituted:

§ 3-56.608 Maintenance clause for facilities contracts.

The clause set forth in § 3-7.5007-4, Maintenance of Government Property, shall be included in all facilities contracts.

e. § 3-56.609 is deleted and the following is substituted:

§ 2-56.699 Liability clause for facilities contracts.

The clause set forth in § 3-7.5007-5, Liability for Government Property, shall be included in all facilities contracts.

[FR Doc. 79-4248 Filed 2-6-79; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 296]

FISHERMEN'S CONTINGENCY FUND

Amended Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

ACTION: Notice of meeting.

SUMMARY: The National Marine Fisheries Service has modified its schedule of public workshops announced in 44FR 5165 dated January 25, 1979. In addition to the workshops announced for New Orleans, Louisiana; Boston, Massachusetts; and Anchorage, Alaska, a workshop will be held in Los Angeles, California.

NMFS intends to propose regulations to implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (the Act), which established a Fishermen's Contingency Fund to compensate fishermen for certain damages and losses caused by certain oil-and-gas related activities. NMFS will hold public workshops to discuss important issues before regulations are proposed.

DATE: The additional workshop will be held on Friday, February 23, 1979, at 2:00 P.M. Any written comments on the issues identified in the January 25 Notice, or on any other aspect of the implementation of the Fishermen's Contingency Fund program, must be received on or before March 5, 1979.

ADDRESS: The meeting will take place at the Regional Office, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California.

FOR FURTHER INFORMATION CONTACT:

Michael L. Grable/Kathryn E. Hensley, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7496.

SUPPLEMENTARY INFORMATION: For a summary of the new statute and a listing of nine issues identified for discussion, the public is referred to the advance notice of proposed rulemaking and notice of public workshops published on January 25, 1979 (44FR 5165). A staff working draft of proposed regulations will be made available at the workshop.

WORKSHOPS: The National Marine Fisheries Service invites oral and written public comment on the issues identified in the advance Notice, and on implementation of the Fishermen's Contingency Fund program in general, before NMFS issues proposed regulation to implement the program. Information regarding the workshop in Los Angeles can be obtained from:

Mr. Gerry Howard, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731, Telephone: 213-548-2478.

Interested members of the public are invited to attend and participate in the workshop. In addition, interested persons may submit written comments on the issues identified in the advance Notice, or on any other aspect of the implementation of the Fishermen's Contingency Fund program. All comments received will be considered before NMFS issues proposed regulations to implement the Act.

Dated: February 2, 1979.

WINFRED H. MEIBOHM,
Acting Executive Director, NMFS.
[FR Doc. 79-4114 Filed 2-6-79; 8:45 am]

[4310-10-M]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR 403]

ENDANGERED SPECIES EXEMPTIONS

AGENCY: Department of the Interior, Department of Commerce, National Oceanic and Atmospheric Administration.

ACTION: Proposed rule.

SUMMARY: These proposed regulations describe how qualified applicants would apply for exemptions from the requirements of section 7(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* Section 7(a) directs all Federal agencies to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of its critical habitat. In addition, the proposed regulations would establish certain procedures for initial handling of exemption applications. Pending adoption of final regulations, these proposed regulations will be followed as guidelines.

DATES: Any comments on this proposal must be submitted to the Secretary of the Interior on or before April 9, 1979.

ADDRESS: Please send comments to the Assistant Secretary of the Interior for Policy, Budget and Administration, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Raphaela Semmes, Office of Policy Analysis, Department of the Interior, Room 4160, Interior Building, 18th & C Streets, NW., Washington, D.C. 20240, 202-343-5978. William Aron, Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, 202-634-7432.

SUPPLEMENTARY INFORMATION:

THE EXEMPTION PROCESS

The Endangered Species Act Amendments of 1978 (Pub. L. 95-632), enacted on November 10, 1978, establish a procedure to exempt certain Federal actions from the pre-existing requirement of Section 7 of the Endangered Species Act of 1973 (now renumbered 7(a)). Section 7(a) requires Federal agencies to insure that any actions which they authorize, fund, or carry out, do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. Applications for exemptions may be considered only if made by Federal agencies, by Governors in affected States, or by persons whose permit or license applications have been denied primarily because of the application of section 7(a) to a Federal agency's actions. Applications are to be conveyed to the Secretary (Interior or Commerce), and evaluated by a review board and, if certain criteria are met, by the Endangered Species Committee.

Review Boards. Review boards are to be established for each exemption application with the special purpose of making a threshold determination on the application and of developing a comprehensive record for and submitting a report to the Endangered Species Committee. Review boards are to be composed of three members: one member appointed by the Secretary, one member who is a resident of the affected State or an otherwise qualified individual, appointed by the President, and an Administrative Law Judge. These review boards initially are to determine by majority vote within 60 days of appointment:

(1) Whether an irresolvable conflict exists between the proposed action and the requirements of section 7(a);

(2) Whether consultation was carried out in good faith and whether the Federal agency developed and fairly considered any reasonable and prudent alternatives that would have avoided an irresolvable conflict;

(3) Whether the Federal agency conducted any biological assessment required for construction projects; and

(4) Whether the Federal agency and permit or license applicant have refrained from making any irreversible or irretrievable commitment of resources with respect to the agency action that forecloses any reasonable or prudent alternatives that would avoid an irresolvable conflict.

Unless the review board makes affirmative determinations on all four questions, the application procedure ends and the application never reaches the Endangered Species Committee. If the review board determines that all of the requirements are met, it must submit a report to the Committee within an additional 180 days, discussing:

(1) The availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(2) A summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance; and

(3) Appropriate reasonable mitigation and enhancement measures which should be considered by the Committee.

Endangered Species Committee. An Endangered Species Committee is established by the Amendments, composed of:

(1) The Secretary of the Interior, who is chairman.

(2) The Secretary of Agriculture.

(3) The Secretary of the Army.

(4) The Chairman of the Council of Economic Advisers.

(5) The Administrator of the Environmental Protection Agency.

(6) The Administrator of the National Oceanic and Atmospheric Administration.

(7) Individuals who are residents of each affected state or otherwise qualified, appointed by the President for each exemption application, casting a single vote collectively.

The Committee must determine whether or not to grant an exemption within 90 days after receiving the review board's report. An exemption requires an affirmative vote of five or more Committee members, voting in person. To grant an exemption, the Committee must determine that:

(1) There are no reasonable and prudent alternatives to the agency action;

(2) The benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and the action is in the public interest; and

(3) The action is of regional or national significance.

In granting an exemption, the Committee also must establish reasonable mitigation and enhancement measures that are necessary and appropriate to minimize the adverse effects of the agency action upon the listed species or critical habitat concerned.

Once an exemption is granted by the Committee, a Federal agency may proceed with the proposed action, but must conform to any mitigation and enhancement measures ordered by the Committee, and must report annually on these measures to the Council on Environmental Quality until all such measures have been completed.

Pending adoption of final regulations, exemption applicants should submit applications which conform to the requirements of these proposed regulations.

The Department of the Interior, as lead agency in development of these regulations, has determined that this document does not contain a significant proposal according to criteria established by the Department of the Interior pursuant to Executive Order 12044.

DESCRIPTION OF PROPOSED RULEMAKING

These proposed regulations would implement the new section 7(f) which was added to the Endangered Species Act by the Endangered Species Act Amendments of 1978. This section requires the Secretary to promulgate regulations governing exemption applications not later than February 8, 1979.

The proposed regulations would be issued jointly by the Department of the Interior and the National Oceanic and Atmospheric Administration, Department of Commerce. The scope of the proposal is limited to procedures for filing exemption applications, duties of the two agencies with respect to the applications, and the relationship between the agencies and the Endangered Species Committee and review boards. They do not set out general review board and Committee procedures, which may be issued under the Committee's separate authority. The proposed regulations contain four sections.

Section 403.01 contains definitions of terms.

Section 403.02 describes how applications would be made: who may apply, where and when to apply, and the contents of applications. In addition, § 403.02 would provide for notification of the application to the Secretary of

State and the Chairman of the Council on Environmental Quality. Section 403.03 would govern the appointment of review boards, and the initiation of their deliberations.

Section 403.04 sets forth special provisions governing the relationship between the two agencies and the Endangered Species Committee. In particular, it describes how State members would be appointed to the Committee.

Accordingly, it is proposed to amend Chapter IV of Title 50 as set forth below:

Joint Regulations—Department of the Interior—Department of Commerce.

1. Revise the heading of Chapter IV to read as above.

PART 403—ENDANGERED SPECIES EXEMPTIONS

2. Add a heading for a new Part 403 to read as above.

3. Add an index for new Part 403 to read as follows:

Sec.

§ 403.01 Definitions.

§ 403.02 Applications for Exemptions.

§ 403.03 Review Boards.

§ 403.04 Endangered Species Committee.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, as amended.

4. Add §§ 403.01 through 403.04 of Chapter IV to read as follows:

§ 403.01 Definitions.

(a) *Definitions adopted from 50 CFR 402.02.* Any terms defined in 50 CFR 402.02 that are used in this subchapter shall mean the same as defined in that section.

(b) *Additional definitions.* (1) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1543.

(2) "Alternative courses of action" means alternatives and thus is not limited to original project objectives and agency jurisdiction.

(3) "Committee" means the Endangered Species Committee established pursuant to section 7(e) of the Act.

(4) "Irresolvable conflict" means, with respect to any action authorized, funded or carried out by a Federal agency, a set of circumstances under which, after consultation as required in Part 402 of this part, completion of such action may jeopardize the continued existence of an endangered or threatened species, or result in the adverse modification or destruction of a critical habitat.

(5) "Mitigation and enhancement measures" means measures to minimize the adverse effects of an activity or program on listed species or their critical habitats and to improve the conservation status of such species beyond that which would occur without the activity or program.

(6) "Secretary" means the Secretary of the Interior or the Secretary of Commerce or his or her delegate depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

§ 403.02 Applications for Exemptions.

(a) *Scope.* This part contains regulations for applications to exempt Federal agency actions from the requirements of section 7(a) of the Act.

(b) *Where to apply.* Application for exemptions must be made to the Secretary.

(c) *Who may apply.* Applications for exemptions will be acted upon by the Secretary only if made by (1) a Federal agency, (2) the Governor of a State in which the agency action will occur, or (3) a person whose application to the affected Federal agency for a permit or license has been denied primarily because of the application of section 7(a) to the Federal agency's action.

(d) *When to apply.* (1) Applications for exemptions for federal agency actions other than issuance of permits or licenses will be acted upon by the Secretary only if received within a 90 day period following termination of the consultation process and issuance of the biological opinion under 50 CFR Part 402 which states that the Federal agency action may jeopardize the continued existence of any listed species or destroy or adversely modify its critical habitat, or if received within a 90 day period following the effective date of these regulations when such a biological opinion was issued before that effective date.

(2) Applications for exemptions for federal actions involving the issuance of permits or licenses will be acted upon by the Secretary only if received within a 90 day period following denial of the permit or license by the affected Federal agency, or, if received within a 90 day period following the effective date of these regulations, when the relevant permit or license was denied before that effective date.

(e) *Contents.* Applications for exemptions must provide the following information in writing:

(1) Applicant's name, mailing address, and phone number, including the name and telephone number of the individual to be contacted regarding the application.

(2) If the Federal action that is the subject of the application is the issuance of a permit or license: a detailed description of the relevant permit(s) or license(s) denied by a Federal agency, including a description of the activity proposed to be conducted by the applicant, a description of the law(s) under which a permit or license is required, a description of all steps

taken by the applicant to obtain the permit or license, and a statement of grounds given for denial of the application by the Federal agency.

(3) A comprehensive description of the proposed Federal action, except as already set forth under paragraph (2) of this section and of the effect such action may have upon listed species or their critical habitat.

(4) A detailed description of any actions taken pursuant to 50 CFR Part 402, including a description of the consultation process, a copy of the report of any biological assessment, and a copy of the biological opinion prepared by the affected Federal agency.

(5) If the biological opinion was issued before the effective date of these regulations, a statement by the agency which issued such opinion that it has reviewed the opinion since the effective date of these regulations and has found it valid and sufficient under the Endangered Species Act as amended.

(6) A detailed description of any alternatives to the proposed action considered by the affected Federal agency which would avoid an irresolvable conflict, including an explanation of why there are no reasonable and prudent alternatives to the proposed action that would avoid such a conflict and why the proposed action cannot be altered or modified to conform with the requirements of Section 7(a) of the Endangered Species Act as amended.

(7) A detailed description of any resources committed to the proposed action by the affected Federal agency and any permit or license applicant demonstrating that the agency and any permit or license applicant have made no commitment which has the effect of foreclosing the formulation or implementation of any reasonable and prudent measures that would avoid an irresolvable conflict.

(8) A detailed explanation of why the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and why the action is in the public interest.

(9) A detailed explanation of why the action is of regional or national significance.

(10) A detailed description of possible mitigation and enhancement measures including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement.

(f) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of any application submitted in accordance with § 403.02 of this part and shall request that the Secretary of State notify the Chairman of the Endangered Species Committee within 60 days after the application was submit-

ted to the Secretary whether the granting of an exemption and the carrying out of the proposed action would be in violation of any international obligation of the United States.

(g) *Notification of the Chairman of the Council on Environmental Quality.* The Secretary will promptly transmit to the Chairman of the Council on Environmental Quality a copy of any application submitted in accordance with § 403.02 of this part.

§ 403.03 Review boards.

(a) *Scope.* This part contains provisions governing the relationship between the Secretary and review boards.

(b) *Appointment.* Upon receipt of an application for exemption submitted in accordance with § 403.02 of this part, the Secretary will initiate appointment of a review board consisting of three members:

(1) Member appointed by the Secretary. One member of the review board will be appointed by the Secretary within 15 days after receipt of such an application.

(2) State member. (i) When one or more States are affected, the Secretary will notify the Governors of each such State in writing and request them to recommend state residents to be appointed to the review board. Written recommendations of these Governors must be received by the Secretary within 10 days after receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request the President appoint a State resident to the review board from an affected State, within 30 days after the application for exemption was received by the Secretary. (ii) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application, and will request the President to appoint an individual to the review board on or before 30 days after the application for exemption was received by the Secretary.

(3) Administrative Law Judge. The Secretary will request the Office of Personnel Management to appoint an administrative law judge to the review board within 30 days after the application is received.

(c) *Submission of application.* Following appointment of all members of a review board under § 403.03(b), the Secretary will submit a copy of the exemption application to each member.

(d) *Secretary's views.* Within 60 days after receipt of an exemption application in accordance with § 403.02 of this part, the Secretary's views on the application will be submitted to the review board, including recommendations as to the final disposition of the application.

§ 403.04 Endangered Species Committee

(a) *Scope.* This part contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.* (1) Concurrently with notification under § 403.03(b)(2)(A), the Secretary will request the Governors of each State to recommend individuals to be appointed to the Endangered Species Committee. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State, within 30 days after the application for exemption was received by the Secretary.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint an individual to the Endangered Species Committee on or before 30 days after the application for exemption was received by the Secretary.

This proposed rulemaking is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The primary authors are Thomas Duncan, Office of the Solicitor, U.S. Department of the Interior and Eric Erdheim, Office of the General Counsel, National Oceanic and Atmospheric Administration.

Dated: February 1, 1979.

LARRY MEIEROTTO,
*Deputy Assistant Secretary of
the Interior for Policy, Budget
and Administration.*

TERRY L. LEITZELL,
*Assistant Administrator for
Fisheries, National Oceanic
and Atmospheric Administration.*

FEBRUARY 1, 1979.

[FR Doc. 79-4246 Filed 2-6-79; 8:45 am]

[6560-01-M]

**ENVIRONMENTAL PROTECTION
AGENCY**

[EPL 1055-61]

[40 CFR Part 52]

**APPROVAL AND PROMULGATION OF
IMPLEMENTATION PLANS**

Hawaii State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: A revision to the Hawaii Public Health Regulations has been submitted to the Environmental Protection Agency (EPA) by the Governor for the purpose of revising the Hawaii State Implementation Plan (SIP). The intended effects of this revision is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on this rule, especially as to its consistency with the Clean Air Act.

DATES: Comments may be submitted on or before March 9, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revision are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations: Environmental Protection and Health Services Divisions, Hawaii State Department of Health, 1250 Punchbowl Street, Honolulu HI 96813. Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, DC 20640.

FOR FURTHER INFORMATION CONTACT:

Douglas Grano, EPA, Region IX,
(415) 556-2983.

SUPPLEMENTARY INFORMATION: The State of Hawaii, on September 12, 1978, submitted a regulation containing a variance from Chapter 43, Section 7(b)(5) of the Public Health Regulations. The variance exempts open fires, for the training of crashcrews in airport firefighting, from the opacity requirements of Chapter 43, Section 8(a). The State's analysis showed that there would be no interference with the attainment and maintenance of the National Ambient Air Quality Standards. The revision appears to be consistent with 40 CFR 51.12 and it is EPA's intention to propose approval of the variance as a revision to the SIP.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth this revision as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Comments received on or before March 9, 1979 will be considered. Comments received will be available inspection at the EPA Region IX Office and the

EPA Public Information Reference Unit.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

AUTHORITY: Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. sections 7410 and 7601(a)).

Dated: January 29, 1979.

PAUL DEFALCO, Jr.,
Regional Administrator.

[FR Doc. 79-4229 Filed 2-6-79; 8:45 am]

[6560-01-M]

[EPL-959-31]

[40 CFR Part 85]

**CONTROL OF AIR POLLUTION FROM NEW
MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES**

Subpart E—Regulations for Model Year 1980 and Later NOx Research Objective Programs Conducted by Automotive Manufacturers

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes procedures which automobile manufacturers must follow in conducting research programs on oxides of nitrogen (NOx) in the 1980 and subsequent Model Years. Section 202(b)(7) of the Clean Air Act authorizes this action.

DATE FOR SUBMISSION OF REQUEST FOR PUBLIC HEARING: On or before February 19, 1979.

SUBMISSION OF WRITTEN COMMENTS: On or before April 9, 1979.

ADDRESS: Send comments to: Administrator, Environmental Protection Agency, Attention: Office of Mobile Source Air Pollution Control (ANR-455), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Robert Wagner, Office of Mobile Source Air Pollution Control, 2565 Plymouth Road, Ann Arbor, Michigan 48105 (313) 688-4279.

SUPPLEMENTARY INFORMATION: On August 7, 1977, Congress amended the Clean Air Act¹ (the Act) to establish as a research objective, the development of "... propulsion systems

¹Pub. L. 95-95, 91 Stat. 685, 753, adding a new paragraph (7) to § 202(b).

and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light-duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen." EPA calculates that the emissions level necessary to meet this requirement is 0.41 gram per mile.

Section 202(b)(7) further requires EPA to publish regulations that direct manufacturers to build vehicles which meet this standard. In addition, the technology which the manufacturers develop must be fuel-efficient and have the potential for mass production.

WHAT ROLE SHOULD EPA PLAY IN THE CONDUCT OF THE MANUFACTURER'S NOX RESEARCH PROGRAM?

Section 202(b)(7) requires that each manufacturer establish a NOx research program to build automobiles which meet the research goal we have set of 0.41g/mi NOx. Section 202(b)(7) also requires the Administrator to develop regulations to ensure that affected manufacturers actually do establish NOx research programs. The Administrator is not to direct or manage the research program of an individual manufacturer. The full responsibility for conducting the research program, including responsibility for problems or failures, must lie with the manufacturer. Lack of full responsibility and accountability on the part of the manufacturer for his/her research effort may impede rather than foster the development of NOx control technology.

With this consideration in mind, one goal of these regulations is to provide each manufacturer full freedom to use its resources and technical expertise in developing and conducting a NOx research program in the manner he/she deems best, and to avoid injecting EPA into the research program in a manner that might shift responsibility for design or conduct of the program from the manufacturer to the Agency.

Once we identified what these regulations should not do, the issue became what role EPA should play in a manufacturer's NOx research program. We believe that Congress intends for EPA to monitor each manufacturer's NOx research activities and to report to Congress on the existence and adequacy of each program. There are no sanctions expressly associated with failure of a manufacturer to comply with section 202(b)(7) of the Act. The manufacturer's concern for its public image appears to be the major incentive for compliance.

WHAT ARE THE MAJOR PROVISIONS OF THESE REGULATIONS

Manufacturer's Research Program. Section 404 of the regulations describes the objectives which Congress established in the Act. First, manufacturers are to develop technology to achieve the NOx research goal of 0.41 g/mi. All automobiles built to meet this research goal must also satisfy all other applicable emission standards and requirements of the Clean Air Act. These regulations do not require the manufacturer to use any specific method to achieve these objectives. The responsibility for making technical judgments rests solely with the individual manufacturer.

Annual Research Plan and Report. These regulations provide a way for EPA to monitor a manufacturer's NOx research program. Each manufacturer must provide EPA with a research plan at the beginning of the research period, and a report at the end.

Research plans must discuss the goals which a manufacturer establishes for himself/herself and describe the relationship of those goals to the objectives of the NOx research program which Congress established in the Act. The plan must discuss in detail specific activities for the annual research period. It must also include schedules for the conduct of such projects and associated milestones.

At the end of each annual research period, manufacturers are required to submit a report to EPA. In this report, the year's research activities must be catalogued and evaluated by the manufacturers in terms of the progress (or lack of progress) made and how the results will be used in subsequent research or production activities. The regulations encourage manufacturers to combine annual reports and subsequent year's research plans to emphasize the continuity of the NOx research efforts and to minimize paper work.

In an effort to further minimize the burden on manufacturers are not required to submit every vehicle to EPA for testing; submission of the annual report will usually be sufficient. However, the Administrator may request vehicles for testing and the manufacturer should be prepared to comply with such a request.

Briefings for the Administrator. These regulations provide that EPA may request briefings from manufacturers on the status of their NOx research activities. These briefings are intended to provide an opportunity for EPA and industry to exchange information relatively informally and without undue paperwork. EPA is not entitled to ask for more than one briefing per 3 months.

EPA Review of Manufacturer's NOx Research Program. These regulations

do not expressly establish a procedure for reviewing and reporting to Congress and the public on manufacturers' research programs, since this information can conveniently be included in either the Annual Report to Congress which is prepared by EPA under section 313, or the section 202(b)(4) reports. Should it appear desirable to do so, EPA may prepare written summaries and reviews of the manufacturers' NOx research programs separately.

Since research is necessarily a creative process, and in any field technical experts will often disagree in interpreting research results and, consequently, in deciding how to best proceed, we expect that in reviewing the materials submitted under these regulations, we may have reservations about the validity of some aspects of a manufacturer's program. However, in reviewing and reporting to Congress on manufacturer's programs, our emphasis will be on the apparent appropriateness of a manufacturer's program, i.e., were the resources allocated to a specific project reasonable in view of the complexity of the problem, were the data sufficient to support the conclusions drawn or decisions made, and were the analytical methods used generally accepted procedures?

EPA Access and Entry to Manufacturers' Research Facilities. This section provides EPA the opportunity to examine test vehicles and other components of interest to the NOx research program at any point in their development and testing. This will enable EPA to independently evaluate the results of any particular program and prepare a more complete and accurate analysis of the potential for improving NOx control on automobiles than would be possible otherwise. In the past, although many manufacturers have been cooperative, EPA has encountered some difficulties in obtaining complete information from the manufacturers on the status of such activities.

As the major thrust of low NOx research regulations is for EPA to monitor, rather than direct or manage, the research program, the right-of-entry and record keeping provisions are a crucial part of these regulations. These provisions are necessary to enable the Administrator to carry out his responsibilities under section 202(b)(7).

The right-of-entry and record keeping provisions are, in part, an adaptation of the Motor Vehicle Certification regulations promulgated on February 27, 1974 (30 FR 7545) and many of the comments made by the Administrator in the preamble accompanying those regulations are applicable here. On May 23, 1978, the Supreme Court decided the case of *Marshall v. Barlow's*,

Inc. 98 S Ct. 1816 (1978) holding unconstitutional warrantless administrative searches or inspections by OSHA under the Occupational Safety and Health Act of 1970. In response to the *Barlow's* decision these proposed regulations would require EPA officials to obtain warrants or their equivalent if consent to enter a facility is refused. The authority for the right-of-entry and record keeping provisions is based on sections 202(b)(7), 206(c), 208(a) and 301(a).

WHAT OTHER MAJOR ISSUES WERE IDENTIFIED IN DEVELOPING THESE RULES?

Paper Work Reduction. One of our major considerations in developing these regulations was to minimize the paperwork required in administering and complying with these rules. It is the Agency's view that both the research plan and the annual report required under this rule are necessary for EPA to effectively monitor the industry. To minimize the burden of preparing them, we allow the annual report and the subsequent research plan to be combined at the manufacturer's discretion. Manufacturers will be permitted to reference applicable portions of other materials provided to EPA in their annual reports. We specifically invite comment on any additional ideas for reducing or record keeping requirements.

Demonstration Vehicles. The Act requires an annual demonstration of the operation of vehicles that achieve the NO_x research objective. An important issue in the development of this rule was that of how the number and types of demonstration vehicle(s) would be determined. We decided that the manufacturers should be responsible for identifying the number and types of vehicles. The manufacturers are required to conduct fuel economy and emissions testing as a minimum, but the manufacturer is responsible for determining the mileage points at which this testing should be performed.

Affected Manufacturers. Section 202(b)(7) of the Act specified that these regulations apply to each manufacturer whose sales represent at least 0.5 per centum of light-duty motor vehicle sales in the United States. Based on vehicle registration or sales data, the following manufacturers were affected for the 1979 research period: American Motors, British Leyland, Chrysler, Fiat, Fuji, Mitsubishi, Ford, General Motors, Honda, Nissan, Toyota, and Volkswagen. This publication constitutes notice of the determination of affected manufacturers for purposes of section 403(c) for the 1980 annual research period.

For 1980 and subsequent model years, the determination of other affected manufacturers will be based on

the production data submitted by the manufacturers under 40 CFR 600.512 in a report called the "model year report" covering the second model year prior to the annual research period.

The model year report required to be submitted under 40 CFR 600.512 is required for the purpose of calculating a manufacturer's fleet average fuel economy which the Secretary of Transportation uses in enforcing the fuel economy standards of the Motor Vehicle Information and Cost Savings Act.

COMMENTS AND THE PUBLIC DOCKET

Copies of materials relevant to this rule are contained in Public Docket No. OMSAPC-78-2 located in the U.S. Environmental Protection Agency, Central Docket Section, Room 2903B (EPA library), 401 M Street, S.W., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

Interested parties may participate in this proposed rulemaking by submitting comments (in quadruplicate if possible) to the Administrator, Environmental Protection Agency, Attention: Office of Mobile Source Air Pollution Control (AW-455), 401 M Street, S.W., Washington, D.C. 20460 no later than April 19, 1979. All relevant material received during that comment period will be considered.

EPA's intention is to assure interested parties an opportunity to study all information which may become the basis for EPA's final action in this proceeding. Accordingly, the Agency will not consider in this rulemaking any materials for which trade secrecy is claimed. Parties who wish to submit information in response to this notice are cautioned that EPA will return any comments which are claimed, in whole or in part, to be confidential.

ECONOMIC IMPACT ASSESSMENT

In accordance with section 317(c) and (d) of the Act, the EPA has considered the economic impacts of this action and determined that the effects of this rule on inflation, competition, consumer costs, and energy use are negligible. The cost to the industry in complying with these provisions is also expected to be minimal. Costs to the industry will be incurred in the process of providing information to the Administrator on their NO_x research programs in the form of reports and in building and testing demonstration vehicles. However, some portion of that cost would be incurred even without these rules, since it is expected that they currently have NO_x research programs. The cost of building and testing a demonstration vehicle for research purposes will vary depending on the extent of testing and the com-

plexity and availability of hardware and vehicle components. Durability testing programs administered by the EPA have averaged \$125,000 per test vehicle. These regulations provide the manufacturer the discretion to determine the appropriate number of test vehicles. The total cost to the industry of this rulemaking action is estimated to be of the order of \$6,000,000.

Accordingly, the EPA has determined that this document is not a "significant" regulation and does not require preparation of a Regulatory Analysis under Executive Order 12044.

Dated: January 29, 1979.

BARBARA BLUM,
Acting Administrator.

EPA proposes to add a new Subpart E to Part 85 which reads as follows:

Subpart E—Oxides of Nitrogen Research Program for the 1980 and Subsequent Model Years

- Sec.
- 85.401 Scope.
 - 85.402 Definitions.
 - 85.403 Manufacturer participation.
 - 85.404 Manufacturer's research program.
 - 85.405 Plan for the research period.
 - 85.406 Conduct of the research program.
 - 85.407 Annual report.
 - 85.408 Maintenance of records; submittal of information; right of entry.
 - 85.409 Treatment of confidential information.

§ 85.401 Scope.

The provisions of this subpart establish an oxides of nitrogen research program and require the participation of certain light-duty vehicle manufacturers.

§ 85.402 Definitions.

The terms used in this subpart shall have the meaning established in the Clean Air Act and 40 CFR Part 80. The following definition shall also apply:

"Annual research period" means the time period from 1 August of a given calendar year to 31 July of the next calendar year, e.g., the 1979 annual research period would be the time period from 1 August 1978 to 31 July 1979.

§ 85.403 Manufacturers' participation.

(a) Each manufacturer whose sales are determined by the Administrator to represent at least 0.5 per centum of light-duty motor vehicle sales in the United States is required to comply with the provisions of this subpart beginning in the 1980 annual research period.

(b) For 1980 and subsequent annual research periods, the Administrator will base his/her determinations under paragraph (a) of this section on production data contained in the model year reports submitted by manufacturers to the Administrator pursuant to

40 CFR 600.512 (for use in calculating a manufacturer's corporate average fuel economy) for the model year two years prior to the year of the annual research period.

(c)(1) The Administrator will provide notice to manufacturers that their compliance with the provisions of this subpart is required beginning in a given annual research period. Such notice shall be deemed to constitute notice for subsequent annual research periods as well, unless rescinded by the Administrator.

(2) A manufacturer may, at any time, request in writing that a new determination be made under paragraph (b) of this section for a given annual research period, stating the basis for such new determination. The Administrator will respond in writing to such requests and issue a new determination in accordance with paragraph (b) of this section.

(d) A manufacturer who is not required to comply with the provisions of this subpart may comply on a voluntary basis.

§ 85.404 Manufacturers' research program.

(a) Each manufacturer who is subject to these regulations shall institute a research program to work towards the following objectives:

(1) The development of propulsion systems and emission control technology to achieve the research goal of 0.41 gram per mile oxides of nitrogen.

(2) The construction and demonstration, for each annual research period, of the operation of light-duty motor vehicles that meet the research objective of paragraph (a)(1) of this section and meets all other applicable emission standards or requirements under the Clean Air Act. The most stringent hydrocarbon, carbon monoxide, evaporative emissions and other emissions standards and/or requirements established by regulation or statute prior to the start of an annual research period for a future model year shall apply.

(3) The demonstration vehicles under paragraph (a)(2) of this section shall:

(i) Be designed to encourage the development of new powerplants and emission control technologies that are fuel efficient;

(ii) Be within or be reasonably expected to be within the productive capability of the manufacturers; and

(iii) Use optimum engine, fuel, and emission control systems.

(b) Each manufacturer's overall oxides of nitrogen research program shall be designed to meet the objectives of paragraph (a) of this section in accordance with good research and engineering practice.

§ 85.405 Annual research period plan.

(a) Not later than September 1 of each annual research period the manufacturer shall provide the Administrator three (3) copies of an annual research program plan that contains the information specified in paragraphs (b) and (c) of this section. Two (2) copies shall be sent to:

U.S. Environmental Protection Agency, Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

One (1) copy, less any material claimed to be confidential shall be sent to:

U.S. Environmental Protection Agency, Office of Mobile Source Air Pollution Control (AW-455), Freedom of Information Office, 401 M Street, S.W., Washington, D.C. 20460.

(b) Each plan shall contain a description and discussion of:

(1) The manufacturer's long term, interim, and short term NOx research and development goals. Long term goals are more than 4 years beyond the end of the annual research period. Interim goals are those applicable between 0 and 4 years beyond the end of the annual research period, and short term goals are those applicable to the annual research period for which the plan applies;

(2) The specific problems that exist, or are expected to exist, in the development and demonstration of vehicles that achieve the objectives of § 85.404;

(3) The relationship of the goals in paragraph (b)(1) of this section to the problems identified in paragraph (b)(2) of this section and to the objectives of section 404 of this subpart; and

(4) The resources, in terms of personnel, capital expenditures, materials, and contracted efforts the manufacturers intend to allocate to the research program. Planned resource expenditures shall be estimated for the current and each future annual research period contained in the plan. Key scientific and engineering personnel shall be identified by name, title, and corporate organizational unit for each major project identified by the manufacturer in response to paragraph (d)(1) of this section.

(c) Each plan shall contain a brief discussion of how the research program established to comply with this subpart interfaces with other programs conducted by the manufacturer, including contracts with the Federal Government. There should be a general discussion of such programs which includes but is not limited to:

(1) The manufacturer's overall low emissions research and development program, including but not limited to

programs for meeting state requirements, unregulated emissions, emissions at high altitude, evaporative emissions, and particulate emissions;

(2) Fuel economy improvement programs;

(3) Vehicle driveability and performance programs; and

(4) Alternate engine programs.

(d)(1) The plan shall identify and fully describe each project and the purposes of each project the manufacturer plans to conduct or sponsor including but not limited to research efforts in:

(i) Catalyst development and evaluation programs;

(ii) Fuel metering development and evaluation programs;

(iii) EGR development and evaluation programs;

(iv) Air injection development and evaluation programs;

(v) Development and evaluation programs for heat conservation;

(vi) Ignition system development and evaluation programs;

(vii) Development and evaluation programs for combustion or combustion chamber modifications;

(viii) Electronic control system/component development and evaluation programs;

(ix) New powerplant programs, such as those related to stratified charge engines, Diesel engines, gas turbine engines, and Stirling engines;

(2) The plan shall provide the following additional information about projects planned to be conducted during the research period to which the plan applies:

(i) A schedule for the initiation and completion of major outputs;

(ii) Detailed discussion of anticipated technical problems; and

(iii) For demonstration vehicles: a description of each vehicle, the number and type(s) of tests to be performed and a description of the engine, fuel system components and emission control system to be used on each vehicle.

§ 85.406 Conduct of the research program.

(a) Nothing in this subpart shall be construed as limiting the scope, or direction of a manufacturer's plan, the manufacturer's decision-making ability, or the manufacturer's responsibility to conduct the research plan.

(b) All programs outlined in the annual research plans required by § 85.405 or necessary modifications to those plans must be conducted in a manner consistent with good engineering and research practice.

(c) Manufacturers shall build and test vehicles that employ technology which is consistent with the objectives of section 404 of this subpart. Testing shall include but is not limited to regulated emissions and fuel economy.

(d) Upon reasonable notice from EPA, manufacturers shall provide periodic briefings and/or reports for the Administrator regarding the status of the activities being conducted during the research period. Such briefings and/or reports will be requested not more frequently than quarterly, and will be limited to vehicle emission and fuel economy data, discussion and interpretation of that data, important events during the reporting period, significant program changes, and other indications of status, progress, or lack of progress in meeting the objectives of the research and development effort.

(e) For purposes of testing, the Administrator may request and the manufacturer shall provide, demonstration vehicles constructed under paragraph (c) of this section.

(f) The manufacturer shall notify the Administrator of any major changes to the plan including, but not limited to, the decision to discontinue mileage accumulation on a vehicle prior to the accumulation of all planned mileage, and/or to destroy a vehicle or prototype test hardware. The manufacturer shall provide an opportunity for the Administrator to test or inspect such vehicles and/or hardware prior to discontinuation or destruction.

§ 85.407 Annual report.

(a) Each manufacturer shall provide three (3) copies of an annual report that contains the information required by paragraph (b) of this section no later than 60 days after the end of the research period to which the report applied. The annual report may be combined with the annual research plan required by section 405 for the following annual research period.

(b) The annual report shall include the following:

(1) A summary of the work conducted, conclusions about the success or failure of each project, a discussion of the implications for future efforts of the research and development activities conducted, a comparison of actual accomplishments to those planned, and identification and discussion of significant problem areas;

(2) A list of projects conducted, a discussion of the relationship of the projects to the goals of the plan submitted pursuant to § 85.405 of this subpart, a discussion of the influence that research and development efforts in programs identified under section 405(c) of this subpart had on the efforts conducted under this subpart.

(3) A description of how the original plan was modified during the annual research period and the basis and rationale for such modification;

(4) A description of each demonstration vehicle constructed under section

406 of this subpart, including a description of each engine, emission control system, and fuel system component used, all test data generated during the annual research period the demonstration vehicles including but not limited to testing for regulated and unregulated emissions, fuel economy, driveability, and performance.

(5) An identification of any vehicle(s) which the manufacturer considers to represent the best relationship among emissions, fuel economy, driveability, performance, cost, reliability, maintainability, producibility and other factors of importance to the manufacturer;

(6) A description of other programs, including those conducted with outside organizations, that generated test data that involve emissions, including but not limited to: engine dynamometer testing, optimization programs, catalyst screening testing, and component testing. Representative data and conclusions from these programs shall be submitted, and impacts of these programs on future vehicle testing shall be discussed;

(7) Projections of the fuel economy implications of the use of the types of technology used during the annual research period, specifically including an estimate of the fleet average fuel economy of a fleet of vehicles that could be manufactured four (4) years in the future. The hypothetical fleet shall be described in terms of the sales mix, inertia weight, engine, transmission, axle ratio, and the emission control system assumed for each type of vehicle;

(8) An identification of the resources expended during the research period and a comparison of those expenditures to those in the plan submitted under section 405.

§ 85.408 Maintenance of records; submission of information; right of entry.

(a)(1) The manufacturer shall, in accordance with scientific and engineering practice, establish, maintain and retain for four years records that interpret and document the technical efforts that are undertaken during the annual research period. Such record keeping shall be sufficient to perform the reporting, briefing, and information requests that may be required under sections 404, 405, 406, and 407 of this subpart.

(2) The Administrator may request, and the manufacturer shall provide to the Administrator if requested, such records kept under paragraph (a) of this section or portions of such records within 10 days of the receipt by the manufacturer of a written request from the Administrator for such records or portions thereof.

(b) In order to allow the Administrator to determine whether a manufac-

turer is conducting his NOx research activities in accordance with good engineering practice, a manufacturer shall admit in accordance with paragraph (e) of this section any EPA Office of Mobile Source Air Pollution Control Program official during operating hours upon presentation of credentials to any of the following:

(1) Any facility where testing of vehicles, engines or components related to a manufacturer's NOx research program has been, is being, or will be conducted;

(2) Any facility where vehicles, components, or other equipment that may be used in the conduct of the NOx research program is manufactured, assembled or stored;

(3) Any facility where any vehicle which was, is being, or is to be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(c) Upon admission to any facility referred to in paragraph (b) of this section, any EPA Office of Mobile Source Air Pollution Control official shall be allowed:

(1) to inspect and monitor any part or aspect of the activities that comprise a manufacturer's NOx research program;

(2) to inspect experimental hardware and testing facilities;

(3) to inspect any new, unreduced, or reduced data or experiment notes; and

(4) to interview personnel who participated, are participating, or will participate in the NOx research program including the planning and conduct of the activities of such a program.

(d) EPA Officials are authorized to seek a warrant or court order authorizing the EPA Officials to enter the facilities, perform inspection-related activities, and obtain reasonable assistance, as appropriate, to execute the functions specified in this section.

(e) EPA Officials who present a warrant or court order as described in paragraph (d) of this section shall be permitted to enter, perform inspection-related activities, and obtain reasonable assistance as described in the warrant or court order. A manufacturer is required to cause those in charge of its facility or a facility operated for its benefit to permit EPA Officials to enter, perform inspection-related activities, or obtain reasonable assistance pursuant to a warrant or court order whether or not the recipient controls the facility. In the absence of such a warrant or court order, EPA Officials may enter facilities, perform inspection-related activities, and obtain reasonable assistance only upon the consent of the manufacturer.

(1) It is not a violation of the Clean Air Act for any person to refuse to permit EPA Officials to enter facili-

ties, perform inspection-related activities, or obtain reasonable assistance without a warrant or court order.

(2) EPA Officials may proceed *ex parte* to obtain a warrant whether or not the Officials first attempted to seek permission of the party in charge of the facilities in question to enter the facilities, perform inspection-related activities, or obtain reasonable assistance.

(f) A manufacturer is responsible for locating its foreign facilities in jurisdictions in which local foreign law does not prohibit EPA Officials from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which local foreign law prohibits.

§ 85.409 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR, part 2, subpart B.

(b) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must submit such information on separate pages which are clearly marked "TRADE SECRET" "SECRET" and which are easily detached from the document, and provide a separate section labeled "CONFIDENTIAL BUSINESS INFORMATION" in which the number of each page on which confidential information appears shall be identified.

(c) If a claim is made that some or all of the information is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(d) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice.

(Sections 202, 206, 208 and 301(a) of the Clean Air Act as amended (42 USC 7521, 7525, 7542 and 7601(a).))

[FR Doc. 79-4227 Filed 2-6-79; 8:45 am]

[6560-01-M]

[40 CFR Part 250]

[FRL 1054-4]

HAZARDOUS WASTE GUIDELINES AND REGULATIONS

Clarification of Comment Due Date

AGENCY: United States Environmental Protection Agency ("EPA").

ACTION: Clarification of comment due date.

SUMMARY: The due date of public comment on EPA's proposed regulations implementing Sections 3001-3004 of the Resource Conservation and Recovery Act of 1976 (RCRA) is March 16, 1979.

FOR FURTHER INFORMATION CONTACT:

Hazardous Waste Management Division (WH-565), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Section 3001: Alan Corson, 202/755-9187.
Section 3002: Harry Trask, 202/755-9187.
Section 3003: Harry Trask, 202/755-9187.
Section 3004: Timothy Fields, 202/755-9206.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to clarify the deadline for submission of public comments on EPA's proposed RCRA Sections 3001-3004 regulations.

Some confusion has arisen on this point because of conflicting statements concerning comment deadlines in the preambles to EPA's proposed Section 3003 regulations (43 FR 18506, April 23, 1978) and its proposed Section 3001, 3002, and 3004 regulations (43 FR 58946, December 18, 1978). In its December 18, 1978 preamble, EPA stated that the deadline for submission of comments on proposed regulations implementing Sections 3001, 3002, and 3004 was March 16, 1979. In the April 23, 1978 preamble, however, EPA stated that the comment period on Section 3001-3005 regulations would remain open until at least 60 days after the proposal of all regulations implementing Section 3001-3005. Because EPA's Section 3005 regulations are not scheduled to be proposed until the end of February, this would mean that the comment period on its proposed Section 3001-3004 regulations would not close until the end of April (or later) 1979.

March 16, 1979, is the correct deadline for submission of comments on these four regulations. Since its April 23, 1978 proposal, EPA has decided not to keep the comment period on the Section 3001-3004 regulations open through the comment period on the Section 3005 regulations for two major reasons. First, EPA's April 23, 1978, statement concerning the comment due date for its Section 3001-3005 regulations was based on the Agency's expectation that the Section 3001, 3002, 3004, and 3005 regulations would be proposed as a set. The Agency has since decided to break off the Section 3005 regulations from this series and to propose those regulations (and repropose its Section 3006 regulations) as part of a consolidated set of regulations for permitting and State program approval under RCRA (hazardous waste facility permitting program), the Clean Water Act (National

Pollutant Discharge Elimination System (NPDES) permit program), and the Safe Drinking Water Act (underground injection control permit program).

Second, the Agency is now on a court-ordered schedule to promulgate its Sections 3001-3004 regulations no later than December 31, 1979 (*State of Illinois v. Costle*, Nos. 78-1689 et al. (D.D.C., January 3, 1979)). Keeping the public comment period on the Section 3001-3004 regulations open until at least 60 days after EPA's Section 3005 regulations are proposed could jeopardize compliance with that schedule.

Dated: January 30, 1979.

THOMAS C. JORLING,
Assistant Administrator for
Water and Waste Management.

[FR Doc. 79-4230 Filed 2-6-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1056-21]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued By Ohio Environmental Protection Agency To Ohio Match Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to approve an Administrative Order issued by the Ohio Environmental Protection Agency to Ohio Match Company. The Order requires the Company to bring air emissions from its coal-fired boilers in Wadsworth, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP) by December 31, 1979. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before March 9, 1979.

PROPOSED RULES

ADDRESSES: Comments should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Cynthia Colantoni, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: Ohio Match Company operates a facility at Wadsworth, Ohio. The Order under consideration addresses emissions from a coal-fired boiler at the facility, which is subject to Ohio Administrative Code 3745-17-07(A) and 3745-17-10(B). The regulations limit the emissions of particulate matter, and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by December 31, 1979, by replacing the coal-fired boiler with two new gas and/or fuel oil-fired boilers. The source has already satisfied the first two increments contained in the Order.

Because this Order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulations, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Act. U.S. EPA may approve the Order only if it satisfies the appropriate requirements of this subsection.

If the Order is approved by U.S. EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Ohio SIP. However, in the event final compliance is not achieved by July 1, 1979, source compliance with the Order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under Section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will

be considered in determining whether U.S. EPA may approve the Order. After the public comment period, the Administrator of U.S. EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: January 30, 1979.

VALDAS V. ADAMKUS,
Acting Regional
Administrator, Region V.

**BEFORE THE OHIO ENVIRONMENTAL
PROTECTION AGENCY**

In the Matter of: OHIO MATCH COMPANY,
NY, 254 Main Street, Wadsworth, OH 44281.

ORDER

The Director of Environmental Protection, (hereinafter "Director"), hereby makes the following Findings of Fact and, pursuant to Section 3704.03 (S) and (I) of the Ohio Revised Code and in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, issues the following Orders which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

FINDINGS OF FACT

1. Ohio Match Company, (hereinafter "Ohio Match") operates a Riley coal-fired boiler, Model YOS #21 + WW, rated at 68 million BTU per hour, designated by the facility as Boiler #9, and known to the Ohio Environmental Protection Agency as Source No. 1652100009 B001. This source serves the facility located at 254 Main Street, Wadsworth, Ohio 44281.

2. In the course of operation of said source B001, air contaminants are emitted in violation of OAC 3745-17-07(A) and OAC 3745-17-10(B).

3. Ohio Match is unable to immediately comply with OAC 3745-17-07(A) and OAC 3745-17-10(B).

4. Potential emissions of particulate matter from source B001 are approximately 455 tons per year; therefore, Ohio Match constitutes a major source under Section 302(j) of the Clean Air Act, as amended.

5. The compliance schedule set forth in the Order below requires compliance with OAC 3745-17-07(A) and OAC 3745-17-10(B), as expeditiously as practicable.

6. Implementation by Ohio Match of the interim requirements contained in the Orders below will fulfill the requirements of Section 113(d)(7) of the Clean Air Act, as amended.

7. The Director's determination to issue the Orders set forth below is based upon his consideration of reliable, probative and substantial evidence relating to the technical feasibility and economic reasonableness of compliance with such Orders, and their relation to benefits to the people of the State to be derived from such compliance.

ORDERS

Whereupon, after due consideration of the above Findings of Fact, the Director hereby issues the following Orders pursuant to Section 3704.03(S) and (I) of the Ohio Revised Code in accordance with Section 113(d) of the Clean Air Act, as amended, 42

U.S.C., 7401, *et seq.*, which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

1. Ohio Match shall bring source B001, located at 254 Main Street, Wadsworth, Ohio 44281, into final compliance with OAC 3745-17-07(A) and OAC 3745-17-10(B) by replacing B001 with two new gas and/or fuel oil-fired, 150 horsepower boilers no later than December 31, 1979.

2. Compliance with Order 1 above shall be achieved by Ohio Match in accordance with the following schedule on, or before, the dates specified:

Submit final control plans: Completed.
Complete engineering studies: Completed.
Place equipment order: December 1, 1978.
Begin installation: May 1, 1979.
Complete installation: November 1, 1979.
Achievement of final compliance with State and Federal statutes and regulations: December 31, 1979.

3. Pending achievement of compliance with Order 1 above, Ohio Match shall comply with the following interim requirements which are determined to be reasonable and to be the best practicable system of emission reduction, and which are necessary to ensure compliance with OAC 3745-17-07(A) and OAC 3745-17-10(B) insofar as Ohio Match is able to comply with them during the period this Order is in effect in accordance with Section 113(d)(7) of the Clean Air Act, as amended. Such interim requirements shall include:

a. Ohio Match shall immediately use coal with an analysis of: less than or equal to 8.5 percent ash, less than or equal to 4.0 percent sulfur, greater than or equal to 12,000 BTU per pound, in order to minimize emissions from B001.

b. Ohio Match shall immediately institute a regular maintenance program to minimize emissions from B001.

4. Within five (5) days after the scheduled achievement date of each of the increments of progress specified in the compliance schedule in Order 2 above, Ohio Match shall submit a progress report to the Akron Regional Air Pollution Control Agency. The person submitting these reports shall certify whether each increment of progress has been achieved and the date it was achieved. Each report shall include a summary of Ohio Match's compliance with the interim requirements in Order 3 above.

5. Ohio Match shall not be required to install and operate continuous opacity monitors on the new gas and/or oil-fired boilers. Due to their small size (150 horsepower or about 5 million BTU per hour, each) continuous monitoring would be economically unreasonable and serve no useful purpose.

6. Ohio Match shall not be required to install and operate a continuous opacity monitor on the existing coal-fired boiler (Source No. 1652100009 B001) as an interim control measure. Since this boiler will be permanently removed from service upon installation of the new boilers, and because this boiler is not capable of complying with the opacity requirements of the Ohio Administrative Code (OAC 3745-17-07(A)) and would, therefore, be in continuous violation, installation of a continuous opacity monitor would serve no useful purpose and would be economically unreasonable.

7. Ohio Match shall apply for and obtain a permit to install the new gas and/or oil-

fired boilers prior to beginning installation in accordance with Chapter 3745-31 of the Ohio Administrative Code.

8. Ohio Match is hereby notified that unless it is exempted under Section 120(a)(2) (B) or (C) of the Clean Air Act, as amended, failure to achieve final compliance with Order 1 above by July 1, 1979, will result in a requirement to pay a non-compliance penalty under Section 120 of the Clean Air Act, as amended.

These Orders will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

Dated: December 21, 1978.

NED E. WILLIAMS, P.E.,
Director.

WAIVER

The Ohio Match Company agrees that the attached Findings and Orders are lawful and reasonable and agrees to comply with the attached Orders. The Ohio Match Company hereby waives the right to appeal the issuance or terms of the attached Findings and Orders to the Environmental Board of Review, and it hereby waives any and all rights it might have to seek judicial review of said Findings and Orders either in law or equity. The Ohio Match Company also waives any and all rights it might have to seek judicial review of any approval by U.S. EPA of the attached Findings and Orders or to seek a stay of enforcement of said Findings and Orders in connection with any judicial review of Ohio's air implementation plan or portion thereof.

Dated: November 18, 1978.

JAMES R. KNIGHT,
*Authorized Representative of
Ohio Match Co.*

[FR Doc. 79-4240 Filed 2-6-79; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

CITY OF CHEYENNE WATER DIVERSION, MEDICINE BOW NATIONAL FOREST, ALBANY AND CARBON COUNTIES, WYOMING

Notice of Intent to Prepare an Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an Environmental Statement for the proposed diversion of water from streams on the Hayden and Laramie Districts to be used by the City of Cheyenne, Wyoming.

This proposal could change the existing wilderness characteristics of Management Unit IV of the Huston Park Unit. This type of action, according to Section 1952.22a(2), FSM 1950 I.D. No. 3 of May 26, 1978, requires that an Environmental Statement be prepared.

This proposal involves the installation of approximately 47 miles of large water pipe, enlargement of two reservoirs to increase holding capacity, plus the associated impacts of modified stream flows, some of which support the unique Colorado River cutthroat trout. The Statement will specifically address the proposal, alternatives to the proposal and the environmental effects associated with each alternative considered.

There has been public concern expressed in regard to this project by way of comments to the Huston Park Final Environmental Statement and Supplement. The area covered by the Huston Park Environmental Statement and Land Management Plan represents only a portion of the entire area affected by the proposal.

The Chief of the Forest Service is the responsible official for the Environmental Statement and the Forest Supervisor of the Medicine Bow National Forest will provide staff support in the preparation of the Environmental Statement.

It is anticipated that the process will take approximately 16 months and a Draft Environmental Statement will be available by May 1980, with a Final Environmental Statement scheduled for October 1, 1980.

The start of the project, if approved, would begin in May 1981.

Comments on this Notice of Intent should be sent to Craig W. Rupp, Regional Forester, Rocky Mountain Region, 11177 W. 8th Ave., P.O. Box 25127, Lakewood, Colorado 80225.

R. MAX PETERSON
Deputy Chief, P&L

JOHN R. MCGUIRE
Chief

JANUARY 31, 1979.

[FR Doc. 79-4117 Filed 2-6-79; 8:45 am]

[3410-11-M]

FOREST PLAN, CARSON NATIONAL FOREST, TAOS AND RIO ARRIBA COUNTIES, N. Mex.

Intent To Prepare an Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an Environmental Statement for the Carson National Forest Plan which will set the Carson's future management. It will:

- a. Identify the major issues
- b. Present public comments
- c. Outline the planning approach
- d. Discuss the existing situations
- e. Record assumptions about the future
- f. Show and evaluate several alternative ways of management
- g. Indicate a preferred alternative with necessary requirements and constraints, and
- h. Clarify management practices and associated terminology

Work has already begun. The basic approach in public involvement has been to contact all groups, organizations, agencies and individuals who might in any way be interested in the management of the Carson National Forest. Each is given the opportunity to participate. Various means of contact have been used; cards, pamphlets, TV announcements, newsletters, newspaper articles, radio programs, poster campaign, slide-tape shows, meetings, and booklets.

The intensive public involvement effort has provided the Carson with an insight as to how the public feels the Forest should be managed. Issues brought to our attention by the public that will be addressed in the plan, include: (1) Maintaining a continuing

supply of fuelwood, (2) deciding what portion of the Forest should and should not be classified as Wilderness, (3) meeting local and non-local recreation demands while providing for quality experiences and minimizing effects on other users, and (4) increasing law enforcement to reflect public concern for unauthorized removal of fuelwood, infractions by wilderness users, vandalism and harassment in recreation areas, and unauthorized livestock use.

M. J. Hassell, the Regional Forester, is the responsible official, and Carveth V. Kramer, Carson National Forest Planner will be the team leader for the Environmental Assessment and Statement.

The environmental assessment will be completed by February 1979. The Draft Environmental Statement is scheduled for completion in June 1979, with a three month review period. The Final Environmental Statement is scheduled for filing in November 1979.

Comments on the Notice of Intent or on the planning project should be sent to Jack Crellin, Forest supervisor, Carson National Forest, P.O. Box 558, Taos, New Mexico 87571, Attention: Forest Planning.

M. J. HASSELL,
Regional Forester.

JANUARY 25, 1979.

[FR Doc. 79-4198 Filed 2-6-79; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

ALLISON COURT ENTERPRISES, LTD. ET AL.

Petitions by Seven Producing Firms For Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from seven firms: (1) Allison Court Enterprises, Ltd., 1359 Broadway, New York, New York 10016, a producer of women's jeans, slacks and skirts (accepted January 17, 1979); (2) Berger Bros. Leather Goods Company, Inc., 35 East 20th Street, New York, New York 10003, a producer of handbags (accepted January 18, 1979); (3) Crislu Corporation, 141 Nevada Street, El Segundo, California 90245, a producer of jewelry (accepted January 26, 1979); (4) Korelle Industries, Inc., 36 Mileed Way, Avenel, New Jersey 07001, a producer of plastic coated fab-

rics (accepted January 26, 1979); (5) ATP Processors, Ltd., 1 Van Houten Street, Paterson, New Jersey 07505, a printer of fabrics (accepted January 30, 1979); (6) Gillette Industries, Inc., 1207 South Seventh Street, P.O. Box 2167, La Crosse, Wisconsin 54601, a producer of down-filled outerwear (accepted January 30, 1979); and (7) Aly Handbags, Inc., 9907 N.W., 79th Avenue, Hialeah Gardens, Florida 33016, a producer of handbags (accepted January 31, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification
Division, Office of Planning
and Program Support.

[FR Doc. 79-4112 Filed 2-6-79; 8:45 am]

[3510-25-M]

Industry and Trade Administration

SEMICONDUCTOR TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Semiconductor Technical Advisory Committee will be held on Thursday, February 22, 1979, at 9:30 a.m. in Room 3817, Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C. The meeting will continue February 23 in Room B 841, Main Commerce Building, to its conclusion.

The Semiconductor Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the

recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to semiconductor products, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has five parts:

GENERAL SESSION

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of membership status and suggestions for new members.
4. New business.

EXECUTIVE SESSION

5. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public at which a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (5), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee

members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Semiconductor Technical Advisory Committee and of any subcommittees thereof was published in the FEDERAL REGISTER on December 21, 1978 (43 FR 59537).

For further information, contact Mr. Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone A/C 202-377-4738.

Copies of the minutes of the open portion of the meeting can be obtained by calling Mrs. Margaret Cornejo, Operations Division, Office of Export Administration, 202-377-2583.

Dated: February 1, 1979.

RAUER H. MEYER,
Director, Office of Export Ad-
ministration, Bureau of Trade
Regulation, U.S. Department
of Commerce.

[FR Doc. 79-4113 Filed 2-6-79; 8:45 am]

[3510-08-M]

National Oceanic and Atmospheric
Administration

MASSACHUSETTS COASTAL MANAGEMENT PROGRAM

Approval of Refinements

Notice is hereby given that the Office of Coastal Zone Management has approved five refinements to the Massachusetts Coastal Zone Management Program effective January 17, 1979. The five sets of refinements include the addition of the following regulations:

1. New Part II of the Department of Environmental Quality Engineering Wetlands Protection Regulations.
2. New Department of Environmental Quality Engineering Waterways Regulations.
3. New Chapter J of the Energy Facilities Siting Council Regulations.
4. New Department of Environmental Management Ocean Sanctuaries Regulations.
5. New regulation for Water Quality Certification for Dredging, Dredged Material Disposal and Filling in the Waters of the Commonwealth.

Notice of intent to approve these refinements was published in the FEDERAL REGISTER and interested parties had until January 11, 1979, to comment. No comments were received. A full text of the proposed refinements to the Massachusetts Coastal Management Program was distributed to all Federal agencies. Interested parties

wishing to obtain copies of the refinements may request copies from:

Dick O'Connor, Deputy North Atlantic Regional Manager, Office of Coastal Zone Management, Page Building #1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4235.

Dated: January 30, 1979.

R. L. CARNAHAN,
*Acting Assistant Administrator
for Administration.*

[FR Doc. 79-4106 Filed 2-6-79; 8:45 am]

[3510-22-M]

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to: (1) Review status reports on development of fishery management plans; (2) consider foreign fishing applications, if any; and (3) conduct other fishery management businesses.

DATE: The meeting will convene on Tuesday, March 6, 1979, at 1:30 p.m. and adjourn on Thursday, March 8, 1979, at approximately 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place in the Mariner Conference Center of the Holiday Inn-Downtown, 801 Calhoun Street, Houston, Texas.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, telephone: 813-228-2815.

Dated: February 2, 1979.

WINFRED H. MEIBOHM,
*Acting Executive Director,
National Marine Fisheries Service.*

[FR Doc. 79-4161 Filed 2-6-79; 8:45 am]

[3510-22-M]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL, SCALLOP ADVISORY SUBPANEL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Council

has established the Scallop Advisory Subpanel that will meet to discuss the Scallop Fishery Management Plan.

DATES: The meeting will convene on Friday, March 2, 1979, at 10:00 a.m. and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Best Western Philadelphia Airport Motel, Philadelphia Airport, Route #291, Philadelphia, Pennsylvania 19153, (215) 365-7000.

FOR FURTHER INFORMATION CONTACT:

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: February 2, 1979.

WINFRED H. MEIBOHM,
*Acting Executive Director,
National Marine Fisheries Service.*

[FR Doc. 79-4168 Filed 2-6-79; 8:45 am]

[3510-22-M]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Snapper-Grouper Fishery Management Plan Decision Process; (2) King and Spanish Mackerel Fishery Management Plan Decision Process; (3) Billfish Fishery Management Plan discussion; (4) Swordfish Fishery Management Plan considerations; (5) review foreign fishing permits, if any; and (6) other management business.

DATES: The meeting will convene on Tuesday, February 27, 1979, at 1:30 p.m. and will adjourn on Thursday, March 1, 1979, at approximately 12:00 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at Holiday Inn, Hutchinson Island, Jensen's Beach, Florida.

FOR FURTHER INFORMATION CONTACT:

Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571-4356.

Dated: February 2, 1979.

WINFRED H. MEIBOHM,
*Acting Executive Director,
National Marine Fisheries Service.*
[FR Doc. 79-4169 Filed 2-6-79; 8:45 am]

[3510-22-M]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL'S SNAPPER-GROUPER ADVISORY PANEL AND SCIENTIFIC AND STATISTICAL COMMITTEE

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council was established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Council has established the Snapper-Grouper Advisory Panel and the Scientific and Statistical Committee that will meet to discuss the consideration of the Snapper-Grouper Fishery Management Plan.

DATES: The Snapper-Grouper Advisory Panel meeting will convene on Tuesday, February 20, 1979, at 1:00 p.m. and adjourn on Wednesday, February 21, 1979 at approximately 12 noon and the Scientific and Statistical Committee meeting will convene on Wednesday, February 21, 1979, at 1:00 p.m. and adjourn on Thursday, February 22, 1979, at approximately 12:00 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407.

FOR FURTHER INFORMATION CONTACT:

Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571-4366.

Dated: February 2, 1979.

WINFRED H. MEIBOHM,
*Acting Executive Director,
National Marine Fisheries Service.*
[FR Doc. 79-4167 Filed 2-6-79; 8:45 am]

[3510-22-M]

WOMETCO MIAMI SEAQUARIUM

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant—a. Name: Wometco Miami Seaquarium.

b. Address: 4400 Rickenbacker Causeway, Key Biscayne, Florida 33149.

2. Type of permit: Public Display

3. Name and number of animals: Atlantic bottlenose dolphins (*Tursiops truncatus*), 3.

4. Type of take: To capture and maintain permanently in a facility.

5. Location of activity: Indian River, Inter-coastal waterway, Florida.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before March 9, 1979. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: February 2, 1979.

WILLIAM ARON,
Director, Office of Marine Mammals/Endangered Species, National Marine Fisheries Service.

(FR Doc. 79-4208 Filed 2-6-79; 8:45 am)

[3510-17-M]

Office of the Secretary PRIVACY ACT OF 1974

Adoption of Changes to Existing Systems

The purpose of this notice is to adopt in final form (1) numerous changes made to six existing systems of records for the Patent and Trademark Office; and (2) revised routine uses for existing systems, one for the Maritime Administration and the other for the Patent and Trademark Office.

1. On July 27, 1978 (43 FR 32445-50) the Department of Commerce proposed revising six existing Patent and Trademark Office systems:

COMMERCE/PAT-TM-1, Attorneys and Agents Registered to Practice Before the Office;
COMMERCE/PAT-TM-3, Employee Production Records;
COMMERCE/PAT-TM-7, Patent Application Files;
COMMERCE/PAT-TM-9, Patent Assignment Records;
COMMERCE/PAT-TM-10, Patent Deposit Accounts System; and
COMMERCE/PAT-TM-13, Petitioners for License to File for Foreign Patents;

The changes reflect the Patent and Trademark Office's plan to significantly expand its ADP telecommunications capacity in order to automate records, report, and typing functions and to improve the quality and accessibility to Patent and Trademark Office personnel of information related to the processing of patent applications and patented files.

The basic change is in the storage medium and the speed of retrieval. No change is made in the nature of personal data maintained, or the routine uses of the records.

A new system report was submitted to the Congress and the Office of Management and Budget, as required by the Privacy Act. Interested persons were invited to submit written data, views, or arguments on or before August 28, 1978. No comments were received. The Patent and Trademark Office is now in the process of installing and implementing the telecommunications system. Therefore, the Department adopts these changes effective February 7, 1979.

2. On September 22, 1978 (43 FR 43112) the Department of Commerce proposed a revision of the routine use paragraphs for the COMMERCE/MA-4 system of records, General Agent's Protection and Indemnity and Second Seaman's Insurance: WSA and NSA, to clarify use of medical information; and for the COMMERCE/PAT-TM-6 system, Parties Involved in Patent Interference Proceedings, with respect to public access to patent interference records upon an award of priority by

the Board of Patent Interferences. Interested persons were invited to submit written data, views, or arguments on or before October 23, 1978. No comments were received. The Department adopts the revised routine uses effective October 24, 1978.

The systems referenced above, incorporating all revisions, were published in their entirety in the FEDERAL REGISTER on September 22, 1978 (pages 43132 and 43139-43) as part of the Department's annual republication of Privacy Act systems.

AUTHORITY: 5 U.S.C. 552a, Sec. 3, Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896).

Dated: January 31, 1979.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary
for Administration.

(FR Doc. 79-4143 Filed 2-6-79; 8:45 am)

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

PUBLICATION OF AND REQUEST FOR COMMENT ON PROPOSED RULES HAVING MAJOR ECONOMIC SIGNIFICANCE

Trade Rule 25 of the New York Cocoa Exchange, Inc. Rules 1404-A and B of the Chicago Mercantile Exchange

The Commodity Futures Trading Commission, in accordance with section 5a(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(12) (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95-405, section 12, 92 Stat. 871 (1978), has determined that the following proposed rule changes submitted by the New York Cocoa Exchange, Inc. and the Chicago Mercantile Exchange are of major economic significance and is therefore publishing these proposals for public comment:

Trade Rule 25 of the New York Cocoa Exchange, Inc. is being amended. Although there are various amendments throughout the rule, the Commission has determined that only those amendments shown below are of major economic significance and require publication. These amendments were submitted to the Commission on October 6, 1978. That portion of the rule to be amended currently reads as follows:

GRADING COCOA

Rule 25. All cocoa to be delivered in Exchange-segregated lots must be certified as deliverable with respect to growth, description, condition, count and grade in accordance with the following rules.

1. The growth, description, condition, count and grade of cocoa which may be delivered on an Exchange contract are as follows:

(a) *Growth and Description.*—(1) The standard growths and descriptions of cocoa beans are the following:

Ghana, of the main crop (the product of Ghana, West Africa).

Bahia (the product of Brazil).

San Thome, fine or superior (the product of the Portuguese Island of San Thome).

Ivory Coast, fermented, main crop cocoa (the product of Ivory Coast Republic).

Costa Rican, fermented (the product of Costa Rica).

Panama, fermented (the product of Panama).

Nigeria, of the main crop (the product of Nigeria).

(2) The following variations in growths and description may be delivered at the premiums or discounts indicated below:

Group A.—Addition of one-quarter cent (1/4¢) per lb.

Ceylon, not below native No. 1 (the product of Ceylon).

Grenada estates (the product of Grenada).

Guayaquils (the product of Ecuador).

Java, not below No. 3 (the product of Java).

Jamaica, fermented (the product of Jamaica).

New Hebrides, light break fine (the product of New Hebrides Is.).

Samoa, light break fine, not below sun dried No. 1 (the product of the Island of Samoa).

Trinidad (the product of Trinidad).

Venezuelans (the product of Venezuela).

Grenada, Plantation (the product of Grenada).

Group B.—Deduction of one-eighth cent (1/8¢) per lb.

Grenada, ordinary (the product of Grenada).

Para up-river (the product of Brazil).

Surinam estates (the product of Surinam).

Lome, of the main crop (the product of Togo Republic).

Vitoria (the product of Brazil).

New Guinea (the product of New Guinea).

Group C.—Deduction of one-quarter cent (1/4¢) per lb.

Costa Rican, ordinary (the product of Costa Rica).

Panama, ordinary (the product of Panama).

Sanchez (the product of Santo Domingo).

Fernando Po, of the main crop (the product of the Spanish Island of Fernando Po).

Tabasco (the product of Mexico).

Group D.—Deduction of one-half cent (1/2¢) per lb.

Para down-river (the product of Brazil).

Surinam, ordinary (the product of Surinam).

San Thome, other than fine or superior (the product of the Portuguese Island of San Thome).

Jamaica, ordinary (the product of Jamaica).

Cameroon, of the main crop (the product of the Republic of Cameroon).

Western Cameroon, of the main crop (the product of British Cameroon).

Group E.—Deduction of five-eighths cent (5/8¢) per lb.

Ghana, of the middle crop (the product of Ghana, West Africa).

Ivory Coast, of the middle crop (the product of the Ivory Coast).

Haiti (the product of Haiti).

Group G.—Deduction of three-quarters cent (3/4¢) per lb.

Samoa, not light break fine, or below No. 1 sun dried (the product of the Island of Samoa).

Group H.—Deduction of one cent (1¢) per lb.

All other growths.

After amendment, this portion of Trade Rule 25 will read as follows:

GRADING COCOA

Rule 25. All cocoa to be delivered in Exchange-segregated lots must be certified as deliverable with respect to growth, description, condition, count and grade in accordance with the following rules.

1. The growth, description, condition, count and grade of cocoa which may be delivered on an Exchange contract are as follows:

(a) *Growth and Description.*—The following growth and descriptions of cocoa, as such growths and description may from time to time be known in the trade, may be delivered at the premiums or at par as indicated below:

Group A.—Addition of \$160—per metric ton. Ghana—main crop; Ivory Coast—main crop; Lome—main crop; Nigeria—main crop; Sierra Leone—main crop.

Group B.—Addition of \$80—per metric ton. Arriba (Ecuador); Bahia (Brazil); Cameroon; Sri Lanka; Jamaica; Java; Liberia—main crop; Masie Nguema (Fernando Poo); Samoa; San Thome; Surinam; Tabasco (Mexico); Costa Rican; Ghana—mid-crop; Grenada; Guatemala; Honduras; New Guinea; New Hebrides; Nicaragua; Nigeria—light crop; Panama; Salvador; Trinidad; Venezuela; Vitoria (Brazil); and Zaïre.

Group C.—At par. Bolivia; Haiti; Malaysia; Para (Brazil); Peru; Sanchez (Dominican Republic); and all other growths not presently specified above.

Subsections A and B of rule 1404 of the Chicago Mercantile Exchange are being amended. The Commission has determined that these amendments are of major economic significance and require publication. These amendments were submitted to the Commission on January 18, 1979. The amendments are printed below showing deletions in brackets and additions in italic.

Section 1404-A will read as follows:

A. PAR DELIVERY UNIT

A par delivery unit is 38,000 pounds of either 12/14 or 14/16 pound frozen pork bellies shipped from one federally inspected packing plant in the United States which upon inspection shows [31] 75 or less minor defects. The unit may contain bellies from hogs which have been slaughtered at one or more USDA federally inspected slaughtering plants, provided that all bellies in the unit have been uniformly cut and trimmed from whole dressed hogs at one federally inspected establishment.

Section 1404-B will read as follows:

B. QUALITY DEVIATIONS AND ALLOWANCES

If the bellies in the sample have no more than a total of [31] 75 minor defect equivalents, the entire lot will be deliverable at par. Bellies with [32-60] 76-100 minor

defect equivalents may be delivered at 1/4¢ discount. Bellies with [61-75] 101-125 minor defect equivalents may be delivered at 1¢ discount. Bellies with [76-91] 126-150 minor defect equivalent may be delivered at 1 1/4¢ discount. Bellies with [92-100] 151-175 minor defect equivalents may be delivered at 2¢ discount. Bellies with more than [100] 175 minor defect equivalents are non-deliverable.

Any person interested in submitting written data, views, or arguments on these rules should send his comments by _____, 1979 to Ms. Jane Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

Issued in Washington, D.C. on February 2, 1979.

GARY L. SEEVERS,
Acting Commissioner.

[FR Doc. 79-4160 Filed 2-6-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE INTELLIGENCE AGENCY ADVISORY
COMMITTEE

Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that closed meetings of the DIA Advisory Committee will be held at the Pentagon, Washington, D.C. on: Tuesday and Wednesday, March 6 and 7, 1979.

The entire meetings commencing at 0900 hours are devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, Washington Headquarters Services, Department
of Defense.

FEBRUARY 2, 1979.

[FR Doc. 79-4166 Filed 2-6-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

CASES FILED

Week of January 12 through January 19, 1979

Notice is hereby given that during the week of January 12, 1979 through January 19, 1979, the appeals and ap-

applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file

with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever

occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: January 31, 1979.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 12 Through January 19, 1979]

Date	Name and location of applicant	Case No.	Type of submission
1/12/79	Schulze Processing, Inc., Washington, D.C.	DED-0274	Motion for Discovery. IF GRANTED: Discovery would be granted to Schulze Processing, Inc. with respect to its Appeal of the Entitlements Notice for October 1978.
1/15/79	Aminoff U.S.A., Inc., Houston, Texas	DXE-2114	Extension of relief granted in <i>Aminoff U.S.A., Inc.</i> , 2 DOE Par. (October 24, 1978). IF GRANTED: Aminoff U.S.A., Inc. would be permitted to continue to sell the crude oil produced from the California State Lease 392, Lower Main Zone at upper tier ceiling prices.
1/15/79	Atlantic Richfield Company, Dallas, Texas	DEA-0233, DIS-0233	Appeal of the Economic Regulatory Administration's Decision and Order, Stay Request. IF GRANTED: Atlantic Richfield Company would not be required in January 1979 to supply 418,600 barrels of crude oil to Rock Island Refining Corporation. A stay of the December 17, 1978 Decision and Order issued in this case by the Economic Regulatory Administration would be granted pending a final determination on an Appeal of the supply order which the Atlantic Richfield Company has filed.
1/15/79	Chevron U.S.A., Inc., San Francisco, California	DXE-2115	Extension of relief granted in <i>Chevron U.S.A., Inc.</i> , 2 DOE Par. (January 3, 1979). IF GRANTED: Chevron U.S.A., Inc. would be permitted to continue to sell the crude oil produced from State Lease PRC 1924 Main Zone, Summerland Field, Offshore, Santa Barbara, California at upper tier ceiling prices.
1/15/78	Continental Oil Company, Houston, Texas	DEX-0139	Supplemental Order. IF GRANTED: Continental Oil Company would be relieved of its obligation to supply motor gasoline produced at its Denver and Billings refineries to four refiner customers pending finalization of a Proposed Decision and Order.
1/15/79	Northeast Petroleum Industries, Inc., Washington, D.C.	DFA-0284	Appeal of an Information Request Denial. IF GRANTED: The DOE's December 15, 1978 Information Request Denial would be rescinded and Northeast Petroleum Industries, Inc., would be granted access to certain DOE data pertaining to the scope and application of CLC Form-92.
1/15/79	Shell Oil Company, Houston, Texas	DEX-0138	Supplemental Order. IF GRANTED: Shell Oil Company would be permitted to allocate its motor gasoline on the basis of January 1978 actual purchase volume or 1972 base period volume, whichever is greater, during the period preceding finalization of a Proposed Decision and Order.
1/16/79	Gulf Oil Corporation, Houston, Texas	DEH-1997	Motion for Evidentiary Hearing. IF GRANTED: An evidentiary hearing would be convened with respect to a Statement of Objections submitted by Gulf Oil Corporation in response to a Proposed Decision and Order issued to M4-Michigan Truck Service, Inc.
1/16/79	Mobil Oil Corporation, New York, New York	DFA-0226	Appeal of an Information Request Denial. IF GRANTED: The DOE's November 14, 1978 Information Request Denial would be rescinded and Mobil Oil Corporation would be granted access to certain DOE data.
1/16/79	Ronald F. Schoele, Odessa, Delaware	DEE-2117	Exception to the Reporting Requirements. IF GRANTED: Ronald F. Schoele would not be required to file Form EIA-79 (Monthly Motor Gasoline Service Station Survey).
1/16/79	Sonny's Inc., Bossier City, Louisiana	DEE-2116	Exception to Change Supplier. IF GRANTED: Sonny's, Inc. would be granted a new base period supplier of motor gasoline to replace its present supplier, Southern Marketing Company.
1/17/79	Paul R. Duckworth, Las Vegas, Nevada	DFA-0287	Appeal of an Information Request Denial. IF GRANTED: The DOE's December 7, 1978 Information Request Denial would be rescinded and Paul Duckworth would receive access to cost information regarding certain "Banberry lawsuits."
1/17/79	Trends Publishing, Inc., Washington, D.C.	DFA-0285	Appeal of an Information Request Denial. IF GRANTED: The DOE's December 6, 1978 Information Request Denial would be rescinded and Trends Publishing, Inc. would receive access to additional DOE material generated by the Nuclear Regulatory Commission.
1/18/79	Miller & Chevallier, Washington, D.C.	DFA-0286	Appeal of an Information Request Denial. IF GRANTED: The DOE's December 15, 1978 Information Request Denial would be rescinded and Miller & Chevallier would receive access to a report prepared for the DOE by Price Waterhouse & Company.

NOTICES OF OBJECTION RECEIVED

Date	Name and location of applicant	Case No.
1/12/79	Young Coal Co., Waterloo, Iowa	DEE-0664
1/12/79	Edgington Oil Co., Washington, D.C.	DXE-1850
1/12/79	Chester F. Dolley, Los Angeles, California	DEE-1820
1/12/79	Atlantic Oil Company, Los Angeles, California	DEE-1032
1/16/79	Texaco, Inc., Denver, Colorado	DEE-1394

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 12 Through January 19, 1979]

Date	Name and location of applicant	Case No.	Type of submission
PROPOSED REMEDIAL ORDERS			
1/17/79	Elm City Filling Stations, Inc., New Haven, Connecticut		DRO-0172
1/17/79	Ramco Oil Company, West Sacramento, California		DRO-0173

[FR Doc. 79-4211 Filed 2-6-79; 8:45 aml]

[6450-01]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

January 15 through January 19, 1979

Notice is hereby given that during the period January 15 through January 19, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wished to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except federal holidays.

MILVIN GOLDSTEIN,
Director, Office of
Hearings and Appeals.

FEBRUARY 1, 1979.

PROPOSED DECISIONS AND ORDERS

Champlin Petroleum Company, Fort Worth, Texas, DEE-2033, Crude oil

Champlin Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Sutton Lease located in Oklahoma County, Oklahoma, at upper tier ceiling prices. On January 16, 1979, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request be granted in part.

Chevron USA, Inc., San Francisco, California, DEE-1993, Crude oil

Chevron USA, Inc., filed an Application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Chevron to sell a portion of the crude oil produced for the benefit of the working interest owners from the Huntington B-PE Unit at upper tier ceiling prices. On January 15, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Continental Oil Company, Houston, Texas, DEE-1979, Motor gasoline

Continental Oil Company filed an Application for Exception from the provisions of 10 CFR 211.9. The exception request, if granted, would relieve Continental of its obligation to supply motor gasoline to certain customers from the firm's Denver, Colorado and Billings, Montana refineries. On January 15, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Kenneth Luff, Inc., Denver, Colorado, DEE-1300, crude oil

Kenneth Luff, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at upper tier ceiling prices the crude oil which is produced from Green River Participating Area "B" of the Walker Hollow Unit, located in Uintah County, Utah. On January 18, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Laketon Asphalt Refining, Inc., Evansville, Indiana, DXE-2029, crude oil

Laketon Asphalt Refining, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Laketon of the entitlement purchase obligation imposed in the month of February 1978 to account for the firm's crude oil receipts and runs to stills during the month of December 1978. On January 19, 1979 the DOE issued a Proposed Decision and Order which determined that the exception request should be denied, and that Laketon should be required to purchase \$223,949.40 of entitlements over a six month period to offset the excessive exception relief which the firm had received during its 1978 fiscal year.

Marathon Oil Company, Findlay, Ohio, DXE-2097, crude oil

Marathon Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 100 percent of the crude oil which it produces from the Middle Stevens and Upper Stevens Properties at market prices. On January 19, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Pacific Resources, Inc., Honolulu, Hawaii, DEE-1668, crude oil

Pacific Resources, Inc. filed an Application for Exception from the provisions of Section 211.67(d)(4) of the DOE Entitlements Program. The PRI exception request, if granted, would afford the firm entitlement benefits to compensate it for the penalty imposed by the provisions of Section 211.67(d)(4) with respect to its imports of crude oils. On January 19, 1979, the DOE

issued a Proposed Decision and Order which determined that the exception request be denied.

Phillips Petroleum Company, Bartlesville, Oklahoma, DEE-1888, crude oil

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Phillips to sell the crude oil produced from the Evelyn "A" lease, located in Converse County, Wyoming, at market price levels. On January 15, 1979, the DOE issued a Proposed Decision and Order which determined that the Phillips request be granted.

Phillips Petroleum Company, Bartlesville, Oklahoma, DXE-2019 and DXE-2020

Phillips Petroleum Company filed two Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception requests, if granted, would result in extensions of exception relief previously granted and would permit the firm to continue to sell certain portions of the crude oil which it produces from the Holder "B" Lease and the Yount "B" Lease at upper tier ceiling prices. On January 15, 1979, the DOE issued a Proposed Decision and Order which determined that an extension of exception should be granted.

Shell Oil Company, Houston, Texas, DEE-2014, motor gasoline

Shell Oil Company filed an Application for Exception from the provisions of 10 CFR 211.10. The exception request, if granted, would permit Shell to allocate motor gasoline on the basis of the actual volume of motor gasoline purchased during the corresponding month of the preceding calendar year, or the volume purchased in the 1972 base period, whichever is greater. On January 15, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

True Oil Company, Casper, Wyoming, DEE-1969, crude oil

True Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell the crude oil produced from the Laubach lease located in McCone County, Montana, at upper tier ceiling prices. On January 15, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Union Oil Company, Los Angeles, California, DXE-1076, crude oil

Union Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would extend exception relief previously granted to the firm and would permit Union to sell the crude oil produced from the Point Conception Field at upper tier ceiling prices. On January 18, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

[FR Doc. 79-4213 Filed 2-6-79; 8:45 am]

[6450-01-M]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

January 22 through January 26, 1979

Notice is hereby given that during the period January 22, through January 26, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except federal holidays.

MELVIN GOLDSTEIN,
Director, Office of
Hearings and Appeals.

FEBRUARY 1, 1979.

PROPOSED DECISIONS AND ORDERS

Burdett Oxygen Company, Norristown, Pennsylvania, DEE-1023, propane

Burdett Oxygen Company filed an Application for Exception from the provisions of 10 CFR 211.9. The Burdett exception request, if granted, would result in the issuance of DOE Orders terminating the firm's

base period supplier/purchaser relationship with Amergas-Ugite Division and assigning Burdett a new base period supplier or suppliers of propane. On January 23, 1979, the DOE issued a Proposed Decision and Order which determined that the Burdett exception request be denied.

Colonial Oil Company, Jacksonville Florida, DEE-1461, motor gasoline

Colonial Oil Company filed an Application for Exception from the Mandatory Petroleum Allocation and Price Regulations. Colonial's exception request, if granted, would result in the issuance of an Order which would either (i) assign a new, lower priced supplier as Colonial's base period supplier of motor gasoline in place of its present base period supplier, American Petrofina, Inc. (Fina), or (ii) require Fina to establish a new class of purchaser into which it would place Colonial, or transfer Colonial from its present class of purchaser into one of Fina's other, existing classes or purchasers. On January 22, 1979, the DOE issued a Proposed Decision and Order which determined that the Colonial exception request should be granted and that Fina should be required to create a new class of purchaser into which it will place Colonial.

Continental Oil Company, Houston, Texas, DEE-1889, motor gasoline

Continental Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart E. The exception request, if granted, would permit Conoco to adjust the manner in which its base period marketing costs are established under 10 CFR 212.83(c) and would permit Conoco to eliminate the marketing costs associated with certain bulk plants and service stations sold by the firm to independent marketers pursuant to a divestiture plan. On January 26, 1979, the DOE issued a Proposed Decision and Order which determined that the Application for Exception be granted.

W. B. Jayred, Houston, Texas, DEE-1984, crude oil

W. B. Jayred filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Jayred to sell at market prices the crude oil produced for the benefit of the working interests from the Delta No. 3A 6550' SU 397 Lease located in the Stella Field, Plaquemines Parish, Louisiana. On January 23, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Donald J. Johnson, Vernal, Utah, DEX-0042, crude oil

On May 13, 1977, the DOE issued a Decision and Order which granted Donald J. Johnson exception relief from the provisions of 10 CFR 212.73 in order to provide the firm with an economic incentive to undertake an investment in a crude oil property which it had proposed. In accordance with the terms of that Decision and Order Johnson submitted actual financial and production data for the Roosevelt Unit for the year 1977 and projected financial and production data through the year 1985. On January 23, 1979, after reviewing the level of exception relief granted to Johnson, the DOE issued a Proposed Decision and Order which determined that the amount of ex-

ception relief previously granted should be adjusted through the year 1985.

Lago Petroleum Company, Houston, Texas, DEE-2008, crude oil

Lago Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted would permit Lago to sell a portion of the crude oil produced from the T. J. Felder No. 4 Lease, South Wharton Field, Wharton County, Texas at upper tier ceiling prices. On January 23, 1979, the DOE issued a Proposed Decision and Order which determined that the Lago exception request be granted in part.

Mid-Penn Refining Company, Harmony, Pennsylvania, DEE-1474, motor gasoline

Mid-Penn Refining Company filed an Application for Exception from the provisions of 10 CFR, 211.9. The exception request, if granted would result in the issuance of an order by the DOE assigning a new base period supplier to furnish motor gasoline to Mid-Penn's operations in the State of Pennsylvania. On January 25, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Monsanto Company, Houston, Texas, DXE-2093; DXE-2094, crude oil

Monsanto Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted would extend exception relief previously granted the firm and would permit Monsanto to sell the crude oil produced for the benefit of the working interest owners at the Hendrick "A" and Hendrick "C" properties at upper tier ceiling prices. On January 23, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Navajo Refining Company, Washington, D.C., DEX-0006, crude oil

In accordance with Decisions and Orders issued to the Navajo Refining Company which granted the firm exception relief from the provisions of 10 CFR 211.67 (the Entitlements Program), the firm submitted actual financial data for its 1977 fiscal year. On January 22, 1979, after reviewing the level of exception relief granted to Navajo, the DOE issued a Proposed Decision and Order which determined that Navajo should purchase entitlements equal in value to \$126,804.

Tesoro Petroleum Corporation, San Antonio, Texas, DEE-0444, crude oil

Tesoro Petroleum Corporation filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Tesoro of its obligation to purchase entitlements. On January 22, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Texaco, Inc., White Plains, New York, DEE-2041, motor gasoline

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR 211.10 and 211.102. The exception request, if granted, would permit Texaco to allocate motor gasoline to its customers on the basis

of the actual volume of motor gasoline purchased during the corresponding month of 1978. The relief requested would remain in effect until March 31, 1979. On January 26, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Tosco Corporation, Los Angeles, California, DEX-0118, crude oil

Tosco Corporation filed an Application for Exception from the provisions of 10 CFR 211.67 (Entitlements Program). The exception request, if granted, would result in the extension of the exception relief which was initially granted to the firm in *Tosco Corp.*, 5 FEA Far. 83,146 (1977). On January 23, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

UCO Oil Company, Whittier, California, DPI-0014, Naphtha

UCO Oil Company filed an Application for Exception from the provisions of 10 CFR 213.35(c). The exception request, if granted, would permit the firm to import 1,227,500 barrels of finished naphtha into District V on a license fee-exempt basis during the current allocation period. On January 25, 1979, the DOE issued a Proposed Decision and Order which determined that the firm's request be denied.

[FR Doc. 79-4212 Filed 2-6-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Western Area Power Administration

PUBLIC PARTICIPATION IN GENERAL ADJUSTMENTS IN POWER RATES AND SUPPLEMENTAL PROCEEDINGS FOR POWER RATE ADJUSTMENTS FOR CENTRAL VALLEY PROJECT, CALIFORNIA

Amended Procedures

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of amendment to procedures.

SUMMARY: Current procedures for public publication are amended to incorporate the effect of the delegation of authority to the Assistant Secretary for Resource Applications to confirm and approve and place in effect on an interim basis power and transmission rates pending confirmation and approval of rates on a final basis by the Federal Energy Regulatory Commission.

EFFECTIVE: Amended procedures are effective upon the date of this publication.

FOR FURTHER INFORMATION CONTACT:

Robert Babson, Office of General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, Colorado 80401 (303) 231-1526.

SUPPLEMENTARY INFORMATION: Final Procedures for Public Participa-

tion in General Adjustments for Western Area Power Administration Power Rates were published in the *FEDERAL REGISTER* on March 23, 1978 (43 FR 12080). On April 18, 1978, Supplemental Proceedings for Public Participation in Power Rate Adjustments for Central Valley Project, California, were published (43 FR 16392). Under these procedures, an announcement of a tentative rate adjustment proposal is followed by a lengthy consultation and comment period. After analysis of public comments, a proposed decision on the rate adjustment is made and announced by the Assistant Secretary, either on an interim or final basis, and submitted to the Economic Regulatory Administration (ERA) for review. Further comments are accepted by the ERA. After considering the proposed decision and all comments made before and after the proposed decision, a final decision is then made by the Administrator of the ERA.

DOE Delegation Order No. 0204-33, published in the *FEDERAL REGISTER* on December 28, 1978, (43 FR 60637), requires amending the procedures to reflect the new authority of the Assistant Secretary for Resource Applications and the Federal Energy Regulatory Commission. The amendments are set forth below. There is no change in the opportunity of the public to participate in the decision-making process of the Assistant Secretary.

To the extent that section 501 of the DOE Organization Act is applicable to these procedures, it has been determined that no substantial issue of fact or law exists and that these regulations are unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, these regulations are being promulgated in accordance with section 533 of Title 5, United States Code. These procedures relate to Department management and personnel and to rules of agency organization, procedure, or practice, and therefore are being made final without notice and comment (5 U.S.C. 53 (a)(2), (b) (A)).

Proposed new power rate adjustment procedures for all power marketing administrations will be published for public comment by the Department of Energy within the next several months. Those procedures, as finally adopted, will replace the amended Western Area Power Administration procedures. It is expected that the Central Valley Project (CVP) rate decisions by the Assistant Secretary will be made before that time. If not, the CVP supplemental procedures will be further amended as necessary.

Procedures to be developed and adopted by the Federal Energy Regu-

latory Commission are beyond the scope of these procedures.

Issued in Washington, D.C., January 31, 1979.

GEORGE S. McISAAC,
Assistant Secretary,
Resource Applications.

AMENDMENTS TO PROCEDURES FOR PUBLIC PARTICIPATION IN GENERAL ADJUSTMENTS IN RATES FOR POWER MARKETING BY THE WESTERN AREA POWER ADMINISTRATION

Sections 3, 8, 9, 10, and 11 of the procedures published in the FEDERAL REGISTER on March 23, 1978 (43 F.R. 12080), are rescinded and replaced by the following effective upon publication:

3. Definitions. As used herein—

a. "Departmental" refers to all personnel and components of the Department of Energy except the Federal Energy Regulatory Commission (FERC).

b. "Assistant Secretary" means the Assistant Secretary for Resource Applications of the Department of Energy or his designee.

c. "Administrator" means the Administrator of the Western Area Power Administration or his designee.

d. "Provisional Rate" means a rate that has been confirmed and approved on an interim basis by the Assistant Secretary.

8. *Proposed decision on rate adjustment.* Following review of the information and comments gathered in the course of the proceedings described above, the Assistant Secretary will announce his proposed decision on the rates. A statement shall be prepared of the principal factors leading to the decision which shall include an explanation responding to the major comments, criticisms, and alternatives offered during the comment period. Interested persons will be given at least 30 days from publication of notice to submit comments in writing to the Assistant Secretary on the proposed decision. An opportunity for an oral presentation of views, data, and arguments will be afforded interested persons upon request.

9. Provisional rates.

a. Following review of any oral or written comments on the proposed decision, the Assistant Secretary will confirm and approve rates to become effective on an interim basis. A statement shall be prepared of the principal factors leading to the decision which shall include an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.

b. The Assistant Secretary shall set the effective date for the rates he has confirmed and approved on an interim basis. The effective date shall normally be at least 30 days after the Assist-

ant Secretary's decision, except that the effective date may be sooner when appropriate to meet a contract deadline, to avoid financial difficulties, or to provide a rate for a new project or a new service.

c. The effective date of the Provisional Rates for the purpose of billing may be adjusted by the Administrator to coincide with the beginning of the next billing period following the date set by the Assistant Secretary.

d. The Provisional Rates shall remain in effect on an interim basis until: (1) they are confirmed and approved by the FERC, (2) lower substitute rates are confirmed and approved on a final basis by the FERC, (3) higher substitute rates are confirmed and approved and placed in effect by the FERC, (4) the rates last previously confirmed and approved on a final basis become effective under section 10 below, or (5) they are superseded by other Provisional Rates placed in effect by the Assistant Secretary, whichever occurs first.

10. Final rate approval; refunds.

a. Following confirmation and approval of rates on an interim basis, the Assistant Secretary shall submit such rates to the FERC for confirmation and approval on a final basis. If the FERC confirms and approves the Provisional Rates on a final basis, such confirmation and approval shall be retroactive to the effective date set by the Assistant Secretary.

b. In the event a rate developed by the Assistant Secretary is disapproved by the FERC, the Assistant Secretary shall within 120 days or such additional time as the FERC may provide, develop and submit to the FERC a substitute rate for action by the FERC. A rate confirmed and approved by the Assistant Secretary on an interim basis that is disapproved by the FERC shall remain in effect as provided by the Assistant Secretary, until a substitute rate is confirmed and approved on a final basis by the FERC; *Provided*, That if the Assistant Secretary does not submit a substitute rate within 120 days or such greater time as the FERC may provide, and if the rate has been disapproved because the FERC determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the FERC and revenues collected in excess of such rate during the interim period will be refunded with interest to the extent determined by the FERC. If a substitute rate confirmed and approved on a final basis by the FERC is lower than the rate in effect on an interim basis, any overpayment shall be refunded with interest as determined by the FERC. If a substitute rate confirmed

and approved on a final basis by the FERC is higher than the rate in effect on an interim basis, such rate shall become effective on a subsequent date set by the FERC. If at any time it is determined by the FERC that the administrative cost of a refund would outweigh the amount to be refunded, no refund will be required.

11. *Procedural rulings.* Prior to announcement of the proposed decision referred to in section 8, the administrator may postpone any procedural date or make other procedural changes for good cause shown at the request of any party or on his own motion.

AMENDMENTS TO SUPPLEMENTAL PROCEEDINGS FOR PUBLIC PARTICIPATION IN POWER RATE ADJUSTMENTS FOR CENTRAL VALLEY PROJECT, CALIFORNIA

Sections 2, 7, 8, 9, 10, and 11 of the supplemental proceedings for public participation in power rate adjustments for the Central Valley Project published in the FEDERAL REGISTER on April 18, 1978 (43 F.R. 16392), are rescinded and replaced by the foregoing sections effective upon publication. For the purpose of the supplemental procedures, the foregoing sections are hereby renumbered 2, 7, 8, 9, and 10. Section 2 is further amended by the addition of the following definition:

e. "Party" refers to any person who submitted initial comments, supplemental comments, or rebuttal comments either orally at a forum or in writing.

[FR Doc. 79-4145 Filed 2-6-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of the following meetings.

I. A meeting of subcommittee C of the Industry Advisory Board to the International Energy Agency (IEA) will be held on February 13, 1979, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, or at such other location in Paris as the IEA may designate, beginning at 10:00 a.m. The agenda is as follows:

1. Opening remarks.
2. Pricing in an emergency.
3. Extraordinary costs.
4. Framework for antitrust clearances.
5. Status of legal clearances.
6. Presentation on dispute settlement center.
7. Future work program.

II. A meeting of Subcommittee A of the Industry Advisory Board to the International Energy Agency (IEA) will be held on February 14, 1979, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, or at such other location in Paris as the IEA may designate beginning at 9:30 a.m. The agenda is as follows:

1. Opening remarks.
2. Framework for antitrust clearances.
3. Report by IEA Secretariat on technical aspects of January and February Questionnaire A and Questionnaire B submissions.
4. Review Secretariat papers:
 - A. Report by the SEQ working group on BPFC.
 - B. National emergency sharing organizations (NESOs).
 - C. Product imbalance workshop.
 - D. Agreement between Dutch administration and IEA Secretariat on statistical treatment of incomplete trade data.
 - E. Arrangements for cross border traffic in an emergency.
 - F. Historical data in Questionnaire A and B formats (e.g., September and October in recent submission).
5. Emergency Management Manual changes:
 - A. Questionnaire A and B reporting instructions.
 - B. Frequency and timing of Questionnaire A and B submissions.
6. Computer logging of voluntary offers.
7. Future work program.

III. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on February 15 and 16, 1979, at the headquarters of the IEA, 2 rue Andre Pascal, Paris 16, France, or at such other location in Paris as the IEA may designate, beginning at 9:30 a.m. on February 15. The agenda is as follows:

1. Opening remarks by the Chairman including:
 - A. Membership, subcommittee chairmanship and ISAG staffing.
 - B. Communications to and from the IEA.
 - C. Report on SEQ meeting of November 27 and 28, 1978.
2. Matters arising from the record note of IAB meeting on November 10, 1978.
3. Worldwide supply outlook.
4. Report by IEA on technical aspects of January and February Questionnaire A and B submission.
5. subcommittee C report.
 - A. Framework for antitrust clearances.
 - B. Presentation on dispute settlement center.
 - C. Status of legal clearances.
 - D. Future work program.
6. Subcommittee A report.
 - A. Framework for antitrust clearances.
 - B. Review Secretariat papers.
 - (1) Seasonalization of "trigger" and allocation calculations.
 - (2) Frequency and timing of Questionnaire A and B submissions.
 - (3) Historical data in Questionnaire A and B formats (e.g., September and October in recent submission).
 - (4) Cross border traffic in an emergency.
 - (5) Other papers as time permits.
7. Report of ISAG Manager including:

- A. ISAG organization and staffing.
- B. ISAG/Secretariat Operations Manual (ISOM).
- C. ISAG training.
- D. Future work program.
8. Position of Reporting Companies under:
 - A. EEC competition regulations.
 - B. U.S. Voluntary Agreement.
9. Future work program for the IAB.
10. Date and venues of future meeting of the IAB and subcommittees.

IV. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on February 19, 1979, at the headquarters of the IEA, 2 rue Andre Pascal, Paris, 16, France, or at such other location in Paris as the IEA may designate, beginning at 9:30 a.m. The agenda is as follows:

1. Approval of the draft agenda.
2. Summary record of the twenty-third meeting.
3. Oil supply and demand outlook for 1st quarter—4th quarter 1979. (Report by the Secretariat).
4. Special section of the information system:
 - A. Technical aspects of Questionnaire A and B transmissions in January and February.
 - B. Base period final consumption:
 - (1) Current calculation (4th quarter 1977—3 quarter 1978).
 - (2) Report by the working group on BPFC.
 - C. Emergency reserves at October 1, 1978.
5. Future meeting dates.
6. Any other business.

As provided in section 252(c)(1)(A) (ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., February 2, 1979.

ROBERT C. GOODWIN, Jr.,
Assistant General Counsel International Trade and Emergency Preparedness.

[FR Doc. 79-4316 Filed 2-6-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[EPL 1053-71]

RECONSIDERATION OF THE USE OF PASQUILL-GIFFORD DISPERSION COEFFICIENTS FOR STABILITY CLASS A IN SETTING EMISSION LIMITATIONS FOR FOUR OHIO POWER PLANTS

Comment Solicited

On June 29, 1978, the United States Court of Appeals for the Sixth Circuit remanded to the Environmental Protection Agency (EPA or the Agency) its decision to use the Pasquill-Gifford (P-G) dispersion coefficients for stability class A in modeling isolated, rural powerplants. *Cincinnati Gas & Electric Co. v. EPA*, 578 F. 2d 660

(1978). The modeling had been performed by EPA to set emission limitations for sources in Ohio to assure attainment and maintenance of the national ambient air quality standards for the pollutant sulfur dioxide. See 41 Fed. Reg. 36324, 41 Fed. Reg. 52455, and 42 Fed. Reg. 27588. The Court found that the Agency had not developed an adequate record to support the use of the P-G curves for class A conditions. Moreover, the Court held that the Agency had not adequately considered the alternatives to the use of the P-G class A curves proposed by the utilities during the rulemaking.

The Agency has evaluated the alternative proposed by the utilities and based upon field data not previously considered by the Agency determined that the proposal would severely underestimate ground level concentrations. Conversely, the field data considered by the Agency in evaluating the utility proposal supports the Agency's use of the P-G class A curves in setting emission limitations which will attain and maintain the standards for the four powerplants which EPA determined were regulated based on class A conditions.¹

The Agency solicits comment on its reconsideration of the use of the P-G coefficients for class A conditions for the four power plants. Further, since the Court's remand has effectively stayed the enforcement of the regulation for these four plants, the Agency solicits comment on whether the utilities involved need more time than allowed under the present compliance schedule to bring their sources into compliance with their emission limitations. The Agency requests that the utilities support any request for more time with vendor statements, engineering studies or other documentation. Comments must be submitted before (sixty days from publication) to Ms. Debra Costello, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn, Chicago, IL 60604. Reference material not otherwise available to the public, will be available at the above address during normal working hours.

Following review of all comments and proposed compliance schedules, the Agency will publish its evaluation and amend the SIP if necessary to include compliance schedules for the four powerplants. Further, pursuant to the Court's June 29, 1978 order, the Agency will then stipulate to any remaining disputed issues with the utilities involved. *Cincinnati Gas and*

¹Upon review of the modeling, the Agency determined that only four Ohio power plants have emission limitations which were determined by P-G class A conditions. These are Stuart (Dayton Power & Light Co.), Conesville (Columbus and Southern Ohio Electric Co.), Cardinal and Muskingum River (Ohio Power).

Electric Company, et al., v. EPA, 578, F. 2d 668 (1978).

THE PROPOSAL OF THE UTILITIES.

During the rulemaking, the Ohio utilities commented that it is inappropriate to use the P-G dispersion coefficients for class A meteorological conditions in modeling and setting emission limitations for elevated sources such as powerplants. Without citing any appropriate field data to support their comments the utilities contended that the P-G class A curves, which were developed from field studies of emissions released near ground level, would result in unrealistically high ground level concentration estimates when applied to sources with elevated release points (tall stacks).² Specifically, the utilities postulated that the sigma-z values for class A are too large for tall stack sources.³ The utilities, therefore, proposed that the P-G class A coefficients should not be used in model analyses of emissions from isolated, rural powerplants and that the P-G class B dispersion coefficients which have smaller sigma-z values should be used in place of the class A coefficients. The class B proposal, however, is contrary to the current theoretical

understanding of pollution dispersion and to actual field study data. The proposal, moreover, would result in underpredicted pollutant concentrations and would not produce emission limitations which would assure attainment of air quality standards.

The major criticism of the P-G class A curves is that overly stringent emission limitations will result if they are used to predict dispersion from emissions sources (stacks at least 100 meter high). This criticism is based on the hypothesis that sigma-z values derived from studies of ground level emissions are too large for elevated emissions. While it is reasonable to postulate that sigma-z values may be different for emissions from elevated sources from what they would be for ground level sources, it does not follow that the P-G class A sigma-z values should be smaller when applied to elevated sources. In fact, experimental research indicates that for unstable atmospheric conditions, the sigma-z values should be larger for elevated releases as compared to near ground level releases. See Panofsky (1978), Vogt *et al.* (1978), and Well (1978).

In addition, current dispersion theory is that sigma-z values should be larger for emissions over rough terrain than over smooth terrain. See F.B. Smith (1973) and Pasquill (1974). The original field experiments used to derive the P-G sigma-z values were conducted over prairie grass fields (relatively smooth terrain with a characteristic surface roughness length of less than 0.03 m), which are smoother than the average terrain where the

Ohio power plants are situated (surface roughness length is in the range of 1.0 m). Therefore, based on current theory and experimental research, smaller sigma-z values than the P-G class A sigma-z values should not be used for the Ohio power plants, and use of the smaller class B sigma-z values would be unsupportable.

Moreover, review of field data indicates that use of the P-G class B sigma-z values to estimate predicted ground level concentrations for the four Ohio power plants involved would seriously underestimate the maximum ground level concentrations expected to occur during class A conditions. Table 1 sets forth sigma-z values for the most unstable meteorological condition observed as a function of distance determined in three different dispersion field studies by three different investigators. For comparison purposes, Table 1 also sets forth the P-G values for both classes A and B. As the results of Table 1 demonstrate, the P-G sigma-z values for class B are significantly smaller than the sigma-z values determined in any of the field experiments for the most unstable conditions. In other words, to use the P-G class B sigma-z values to estimate ground level concentrations caused by an elevated source under unstable conditions would result in predictions significantly less than the values determined in actual field studies. The Agency could not, therefore, use class B values in setting emission limitations for these sources since the attainment of standards would not be assured.

²The utilities cited field data that was not relevant to the location of expected maximum concentrations under class A conditions for these four power plants.

³The sigma-z value represents the vertical distribution of the dispersing pollutant.

Site of Field Experiment	Investigator	Tracer Release Height (m)	Surface Roughness Length, z_0 (m)	Stability Designation	Downwind Distance (Km)						
					0.2	0.4	0.6	0.8	1.0	1.2	1.4
O'Neill	Pasquill-Gifford	<1	≤ 0.03	P-G Class A	29	71	154	283	454	668	925
O'Neill	Pasquill-Gifford	<1	≤ 0.03	P-G Class B	20	40	62	86	109	134	158
Brookhaven	Singer-Smith	≥ 100	≈ 1	BNL Class B ₂ *	50	93	135	175	215	254	292
Jülich	Vogt et al.	≥ 100	≈ 1	P-G Class A	33	79	133	192	256	323	394
Karlsruhe	Thomas et.al.	≥ 100	≈ 1	P-G Class A**							
					Experiment Number	Sampling Period	Tracer Used				
					9	1	H ₃	235	341	462	597
					9	2	H ₃	157	188	217	246
					9	3	H ₃	382	520	668	827
					9	1-3	H ₃	327	476	647	838
					19	2	H ₃	903	1140	1380	1610
					19	2	CCl ₄	762	984	1210	1450

NOTICES

* No O_z values are indicated for the most unstable Singer-Smith stability category in Smith (1973); Singer and Smith (1966) indicate stability categories A, B₂, B₁, C, and D based on wind direction traces (with A representing very unstable and D representing very stable); i.e. A is more unstable than B₂.

** All the periods from each of the two Karlsruhe experiments classified by Thomas et.al. (1976) as P-G Class A are shown (based upon Table 1 from Thomas and Nester (1976)).

[6560-01-M]

Consultants for the utilities also criticized the way EPA's model treats emission plumes under class A conditions. They argued that the model unrealistically brings the plume rapidly to the ground before it can disperse and treats the plume as impacting continuously for one hour at the same point. However, this is not how the model treats the plume. Instead, the model treats the plume centerline as extending horizontally from the stack at the effective plume height. The plume centerline, therefore, never impacts directly with the ground contrary to the comments of the consultants. The model treats the plume centerline in this manner for all classes of meteorological conditions; however, the plume's spread about the centerline is treated differently under different classes.

For very unstable conditions (class A), the model spreads the plume widely (in all directions around the centerline) as soon as it is emitted from the stack. This reflects the way the very erratic winds that characterize unstable conditions affect a plume. In contrast, for stable conditions, the model does not disperse the plume quickly, but rather the plume stays more concentrated around the plume centerline for a longer time. In other words, during unstable conditions, the plume disperses quickly; during stable conditions, the plume disperses more slowly. Moreover, the model does not treat the plume as impacting continuously with the ground at one place for an hour. Rather, because the model uses a basic Gaussian dispersion equation, the plume spread is time averaged so that the predicted ground level concentration for an hour is never as high as the highest instantaneous ground level concentrations that occur. See Recommended Guide for the Prediction of Airborne Effluents (edited by Maynard E. Smith), M. E. Smith (1973), Figure II-1, p. 16 or see Slade (1968), page 57.

In summary, the class B proposal of the Ohio utilities is contrary to both dispersion theory and available data. The Agency, therefore, has no basis for adopting the utility proposal; moreover, field study data not included in the original rulemaking record support the Agency's use of the P-G class A dispersion coefficients in its CRSTER (MAXT-24) model to predict concentrations and set emission limita-

tions for the four Ohio power plants involved herein.

FIELD STUDY DATA SUPPORTING THE USE OF THE P-G CLASS A DISPERSION COEFFICIENTS.

Data from field experiments of dispersion from elevated sources over terrain similar to the terrain surrounding the four Ohio power plants support the use of the P-G class A dispersion coefficients. Specifically, Thomas *et al.* (1976) and Thomas and Hester (1976) have published the results of 25 dispersion experiments conducted near the Karlsruhe Nuclear Research Center. In the experiments, dispersion tracers (tritium (H_3) and halogenated hydrocarbons (CCl_4)) were released at heights of 100 meters over rural terrain to determine sigma-z and sigma-y values. The 25 experiments were conducted during varying meteorological conditions including 2 experiments under conditions which the investigators characterized as P-G class A conditions (Experiments 9 and 19 in Table 1). Tracer concentrations under class A conditions were measured out to 1.5 km from the release point along five downwind radial arcs. Based on the measured ground level concentrations, sigma-z values were determined.

The results of the Karlsruhe experiments show that the class A sigma-z values derived from the experiments are comparable to the P-G class A sigma-z values. In fact, the measured values at Karlsruhe are as great or even greater than the P-G class A sigma-z values for distances 1.5 km or less from the release point. See Figures 1-3 which compare the Karlsruhe sigma-z values with P-G sigma-z values and Figures 4-6 which compare the Karlsruhe normalized concentrations values. Moreover, as the EPA model analyses predicted for the four Ohio power plants, the point of maximum observed concentration occurs quite close to the release point. See Figures 4-6. The four power plant modeling analyses estimated maximum concentrations at 1.0-1.3 km. The Karlsruhe experiments measured ground level concentrations under class A conditions to 1.5 km downwind from the release point. The sigma-z values were developed from those measurements. Therefore as Figure 1-6 demonstrate, the Karlsruhe experiments confirm both the general level and locations of maximum ground level concentrations predicted by using the P-G dispersion coefficients for class A meteorological conditions.

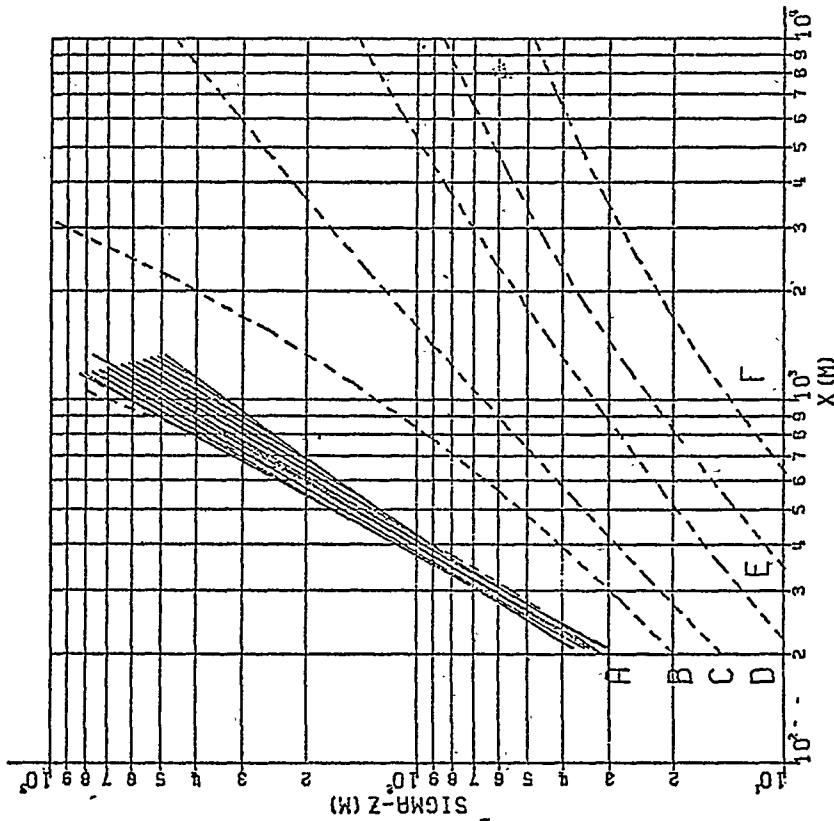


Figure 1: Vertical Dispersion Parameter of Experiment 9 (H_3), Periods 1, 2, 3
(--- Pasquill-Gifford, shaded area = Karlsruhe data)
(This Figure is Figure 6 from Thomas and Nester (1976))

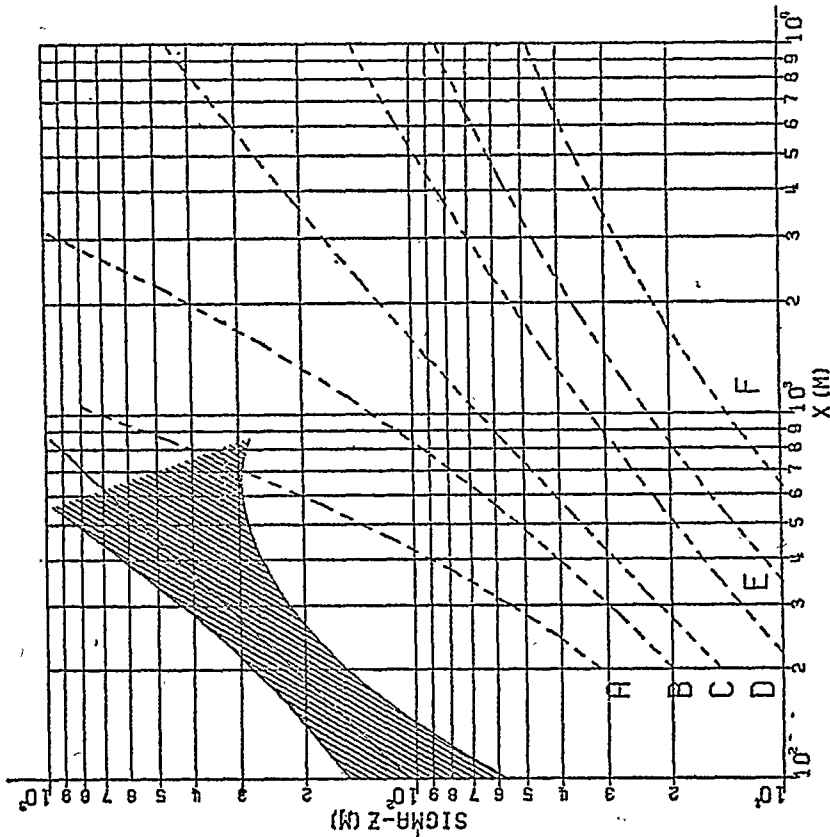


Figure 2: Vertical Dispersion Parameter of Experiment 19 (H_3), Period 2
(--- Pasquill-Gifford, shaded area = Karlsruhe data)
(This Figure is Figure 17 from Thomas and Nester (1976))

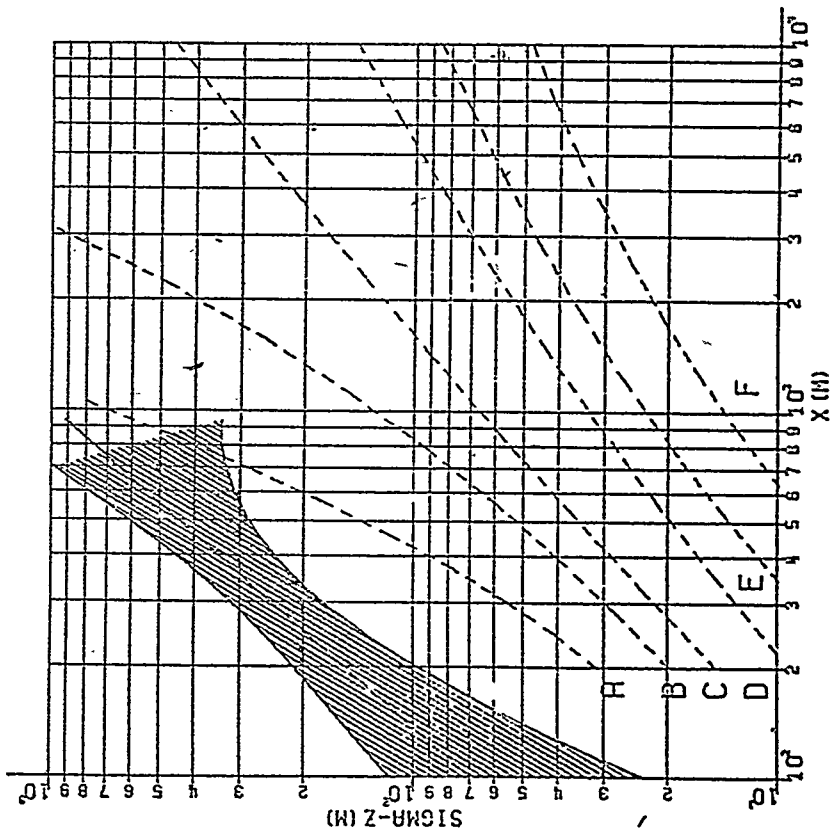


Figure 3: Vertical Dispersion Parameter of Experiment 19 (CCl_4), Period 2
(--- Pasquill-Gifford, shaded area = Karlsruhe data)
(This Figure is Figure 18 from Thomas and Hoster (1976))

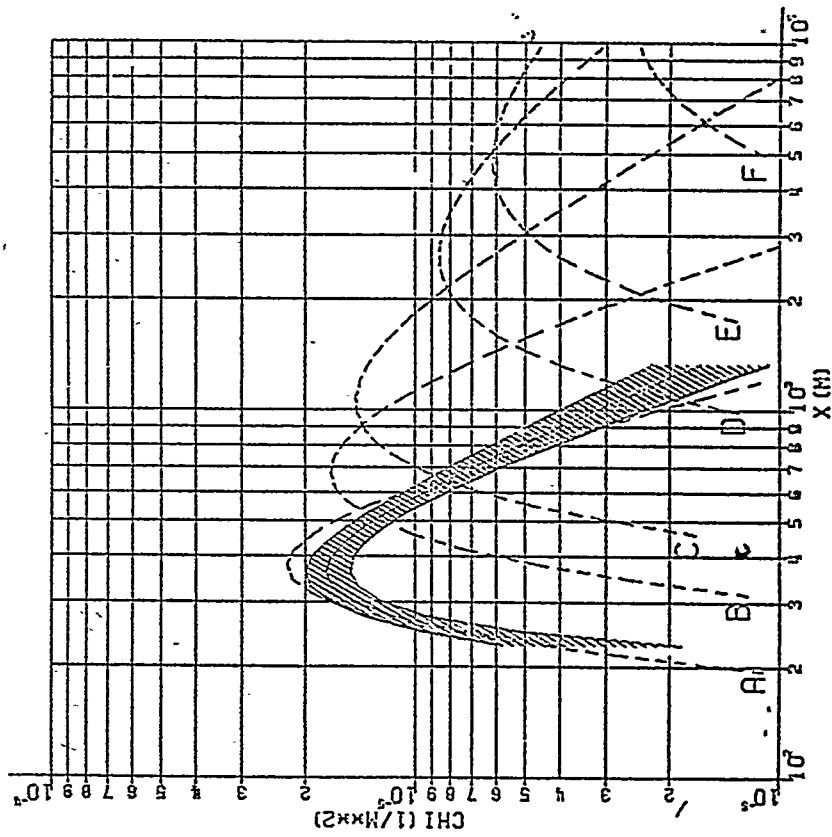


Figure 4: Normalized concentrations of Experiment 9 (H_2), II = 100 m, Periods 1, 2, 3
(--- Pasquill-Gifford, shaded area = Karlsruhe data)
(This Figure is Figure 56 from Thomas and Hoster (1976))

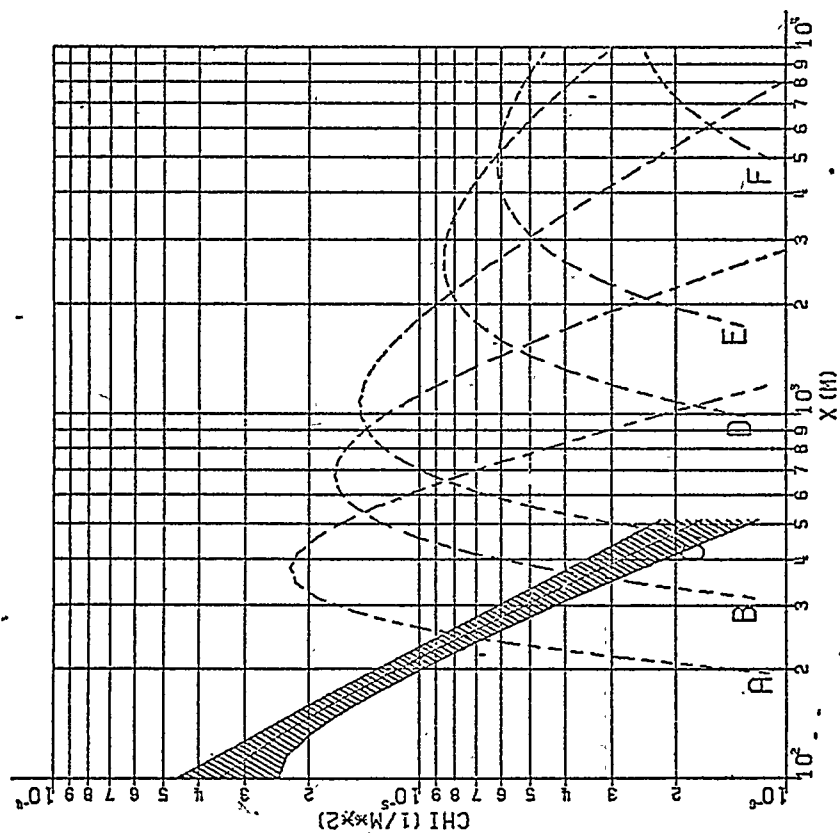


Figure 5: Normalized concentrations of Experiment 19 (H_2), $H = 100$ m, Period 2
(--- Pasquill-Gifford, shaded area = Karlsruhe data)
(This Figure is Figure 67 from Thomas and Nester (1976))

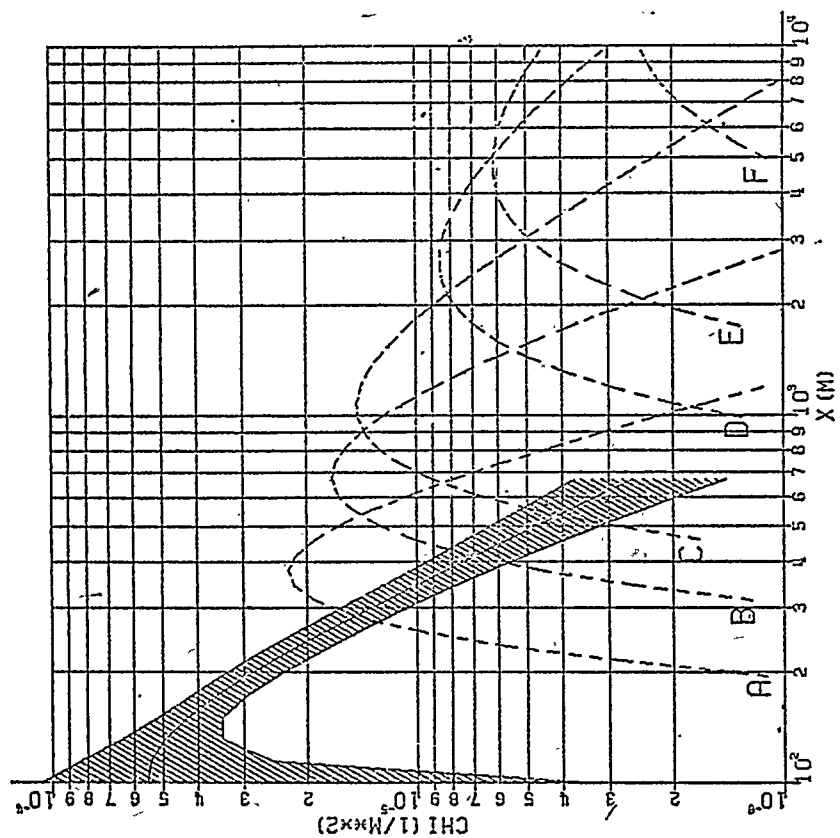


Figure 6: Normalized concentrations of Experiment 19 (CCl_4), $H = 100$ m, Period 2
(--- Pasquill-Gifford, shaded area = Karlsruhe data)
(This Figure is Figure 68 from Thomas and Nester (1976))

[6560-01-M]

EPA recognizes the scientific questions surrounding the use of P-G class A dispersion coefficients at large downwind distances from sources. See Report to the U.S. EPA of the Specialists' Conference on the EPA Modeling Guideline (February 22-24, 1977). However, that criticism is not relevant to the model analyses performed for the four Ohio power plants. EPA recognizes that the predictive reliability of the P-G class A sigma-z values for estimating ground level concentrations decreases as the distance from the source increases. However, since the predicted maximum concentrations used to set the emission limitations for the four power plants were at distances only 1.0-1.3 km from the sources, the accuracy of predictions at greater distances were the P-G sigma-z values are less reliable is irrelevant. Furthermore, as stated above, the Karlsruhe field experiments measured ground level concentrations out to 1.5 km from the point of release and the sigma-z values derived from those field experiments are quite comparable to the P-G class A sigma-z values for the same distances. It is therefore reasonable based upon available scientific data to use the P-G class A curves to set emission limitations for the four power plants.

THE DEVELOPMENT OF NEW DISPERSION COEFFICIENTS

Finally, it is not the Agency's contention that better methods (when available and justified) should not be used or proposed. However, the Agency is not aware of a better scientific approach than the use of the P-G dispersion coefficients for predicting ground level concentration near rural sources during class A meteorological conditions. At present the Agency is conducting research studies in an effort to improve the predictive accuracy of the dispersion coefficients and associated algorithms used in its rural dispersion modeling. That research however is still in the experimental stage. Until the research is completed and reviewed and accepted by the scientific community, the Agency will continue to use the P-G dispersion coefficients for rural sources.

CONCLUSION

The Agency has reviewed the use of the P-G class A dispersion coefficients to set emission limitations for the Stuart, Cardinal, Muskingum River, and Conesville power plants in Ohio. As part of that review the Agency has reconsidered the theoretical arguments previously submitted by the Ohio utilities and also reviewed field data not considered by the Agency during this rulemaking. The theoretical comments submitted by the utilities

are contrary to the current scientific understanding of pollution dispersion; moreover, the proposal of the utilities that the P-G class A dispersion coefficients should be replaced with the P-G class B dispersion coefficients is contrary to both current theory and available experimental data. In short, the utility proposal cannot be accepted by the Agency and the latest experimental data support the continued use of the P-G class A dispersion coefficients.

Dated: January 31, 1979.

BARBARA BLUM,
Acting Administrator.

REFERENCES

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[FR Doc. 79-4052 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1053-5]

AMBIENT AIR MONITORING REFERENCE METHOD DESIGNATION

Thermo Electron Model 14B/E
Chemiluminescent NO-NO₂-NO_x Analyzer

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7044, 41 FR 11252, 41 FR 52694), has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide (NO₂). The new reference method is an automated analyzer which utilizes the gas phase chemiluminescence measurement principle specified for NO₂ reference methods in Appendix F of 40 CFR Part 50 as amended on December 1, 1976 (41 FR 52688). The method is:

RFNA-0179-035, "Thermo Electron Model 14B/E Chemiluminescent NO-NO₂-NO_x Analyzer", operated on the 0-0.5 ppm range and with or without the following options:

14-001 Teflon Particulate Filter
14-002 Voltage Divider Card

A notice of receipt of application for this method appeared in the *FEDERAL REGISTER*, Volume 43, May 31, 1978, page 23650. The method is available from Thermo Electron Corporation, 108 South Street, Hopkinton, MA 01748.

A test analyzer representative of this method has been tested by its manufacturer, in accordance with the test procedures specified in 40 CFR Part 53 as amended on December 1, 1976 (41 FR 52694). After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method. The information submitted by the the applicant will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a reference method, this method is acceptable for use by states and other control agencies for purposes of Section 51.17a of 40 CFR Part 51 ("Requirements for Preparation, Adoption, and Submittal of Implementation Plans") as amended on February 18, 1975 (40 FR 7042). For such use, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes

of §51.17a are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under §51.17a(f) (41 FR 11255).

In general, designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. The conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representations), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new

designation applies to the method as modified or until he has applied for and received notice of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring and Support Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under 40 CFR 51.17a. Additional information concerning this action may be obtained by writing to the address given above.

STEVEN J. GAGE,
Assistant Administrator for
Research and Development.

[FR Doc. 79-4218 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1053-6]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Receipt of Application for Reference or Equivalent Method Determination

Notice is hereby given that on January 3, 1979, the Environmental Protection Agency received an application from Philips Electronics Instruments, Inc., Eindhoven, The Netherlands, to determine if its Model PW 9762/02 Nitrogen Oxides Analyzer should be designated by the Administrator of the EPA as a reference or equivalent method under 40 CFR Part 53, promulgated February 18, 1975 (40 FR 7044). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the FEDERAL REGISTER.

Dated: January 31, 1979.

STEPHEN J. GAGE,
Assistant Administrator for
Research and Development.

[FR Doc. 79-4219 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1053-4]

AMBIENT AIR MONITORING REFERENCE METHOD DESIGNATION

Beckman Model 952-A NO/NO₂/NO_x Analyzer

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7044, 41 FR 11252, 41 FR 52694), has designated another reference method for the measurement of ambi-

ent concentrations of nitrogen dioxide (NO₂). The new reference method is an automated analyzer which utilizes the gas phase chemiluminescence measurement principle specified for NO₂ reference methods in Appendix F of 40 CFR Part 50 as amended on December 1, 1976 (41 FR 52688). The method is:

RFNA-0179-034, "Beckman Model 952-A NO/NO₂/NO_x Analyzer," operated on the 0-0.5 ppm range with the 5-micron Teflon sample filter (Beckman P/N 861072) supplied with the analyzer installed on the sample inlet line, and with or without the Remote Operation Option (Beckman Catalogue No. 635539).

A notice of receipt of application for this method appeared in the FEDERAL REGISTER, Volume 43, February 23, 1978, page 7473. The method is available from Beckman Instruments, Inc., 2500 Harbor Boulevard, Fullerton, CA 92634.

A test analyzer representative of this method has been tested by its manufacturer, in accordance with the test procedures specified in 40 CFR Part 53 as amended on December 1, 1976 (41 FR 52694). After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a reference method, this method is acceptable for use by States and other control agencies for purposes of Section 51.17a of 40 CFR Part 51 ("Requirements for Preparation, Adoption, and Submittal of Implementation Plans") as amended on February 18, 1975 (40 FR 7042). For such use, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of 51.17a are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under 51.17a(f) (41 FR 11255).

In general, designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method.

and thus achieve designated status at modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. The conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representations), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring and Support Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under 40 CFR 51.17a. Additional information concerning this action may be obtained by writing to the address given above.

Dated: January 31, 1979.

STEPHEN J. GAGE,
Assistant Administrator for
Research and Development.

(ER Doc. 79-4217 Filed 2-6-79; 8:45 am)

[6560-01-M]

(FRL 1024-2)

CALIFORNIA STATE MOTOR VEHICLE

Pollution Control Standards

I. INTRODUCTION

By this decision, issued under Section 209(b) of the Clean Air Act, as amended (hereinafter "the Act"),¹ I am granting the State of California a waiver of Federal preemption with regard to its assembly line test procedures for 1979 model year passenger cars, light duty trucks and medium duty vehicles.

Under section 209(b)(1) of the Act, when California requests a waiver of Federal preemption for enforcement procedures which will accompany standards for which a waiver has already been granted and is still in effect, I must grant the requested waiver unless I find that (1) the procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards or (2) the California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. With regard to the first finding, if the public record of the proceedings before me contains plausible evidence that the California enforcement procedures may cause the California standards, in the aggregate, to be less protective than the corresponding Federal standards, then I must deny the waiver if: (1) California did not make a positive determination as to the protectiveness of the standards when coupled with the new enforcement procedures or (2) California did make such a determination, and the record contains clear and compelling evidence that its determination is arbitrary and capricious. With regard to the second finding, state enforcement procedures are deemed not to be consistent with section 202(a) if there is inadequate lead time to permit the development of the technology necessary to implement the new procedures, giving appropriate consideration to

¹42 U.S.C. § 7543(b) (1977).

the cost of compliance within that time frame, or if the Federal and California test procedures are inconsistent.²

I cannot make the findings required for a denial of the waiver under section 209(b)(1) with respect to California's 1979 assembly line test procedures.

II. BACKGROUND

On February 16, 1978, California adopted final regulations for assembly line testing of 1979 model year passenger cars, light duty trucks and medium duty vehicles. Under the revised procedures for quality audit testing, the average emissions for each engine family or subgroup, with deterioration factors applied, must meet the applicable exhaust emission standards. Further, no more than one per cent of the vehicles in an engine family can have emissions which exceed the applicable standards by 2.33 times the standard deviation of the test results. The CARB made numerous other changes of minor technical nature.³

On March 8, 1978, California requested a waiver for these procedures.⁴ A public hearing was held in San Francisco, California on May 18, 1978, pursuant to notice published in the *FEDERAL REGISTER*.⁵

III. DISCUSSION

Public Health and Welfare. California's 1979 model year passenger car, light duty truck and medium duty vehicle exhaust emission standards have received waivers of Federal preemption.⁶ The Public record did not contain any evidence that these enforcement procedures would cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Accordingly, California was not required to make any additional public health and welfare determination in conjunction with this waiver request. I, therefore, cannot find a basis for denying the waiver on this issue.

Consistency. Under section 209(b)(1)(C) of the Act, I also must deny a California waiver request if I

²See 43 FR 9344 (March 7, 1978).

³See Transcript of California Waiver Hearing 33-36 (May 18, 1978) [hereinafter "Tr."].

⁴Letter from Mr. Thomas C. Austin, Deputy Executive Officer, California Air Resources Board (CARB), to Honorable Douglas Costle, Administrator, Environmental Protection Agency (EPA), 2-3 (March 8, 1978).

⁵43 FR 17044 (April 21, 1978); 43 FR 19447 (May 5, 1978).

⁶See 43 FR 25729 (June 14, 1978) pertaining to 1979 model year passenger cars; 43 FR 1829 (January 12, 1978) pertaining to 1979 light duty trucks and medium duty vehicles.

find that California's "accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Ford supported the waiver request.⁷ Its one feasibility objection, regarding the time frame for reporting on an engine family exceeding the one per cent limit, was resolved in the hearing record by the California Air Resources Board's agreement to extend the reporting deadlines.⁸

General Motors, the only other manufacturer to comment on these procedures, did not state that it could not meet the assembly line testing requirements, although it could not state with certainty that it could comply with the revised procedures.⁹ General Motors had three objections. First, GM argued that CARB should not be allowed to take an enforcement action based on one per cent of an engine family's population when the average emissions meet the standards.¹⁰ GM believes that air quality cannot be influenced to a significant degree by one per cent of the vehicle population.¹¹ This argument does not relate to the technological feasibility of meeting the California requirements. It is instead, an argument concerning the wisdom of California's action and the marginal improvements in air quality which will allegedly result. As such, it falls into the area of public policy which must be left to California's judgement.¹²

Second, GM objected on the grounds that, because GM's vehicles do not follow the normal distribution assumed by the CARB, it could not identify what other than quality control improvements, would be needed to stay within the one per cent limitation.¹³ It did, however, believe the new procedure would require something more, such as a calibration change.¹⁴ This speculative argument provides no grounds on which I might deny the waiver request. General Motors has not supplied data supporting its contention that the technology does not exist to comply with the one per cent limitation and, as mentioned above, General Motors did not state that it could not meet the new requirements. Moreover, as determined by the CARB, the purpose of this requirement is to

identify engine family subgroups with a large number of quality-related non-conformities which would otherwise be masked by the emission test results from the remaining vehicles.¹⁵ The choice of 2.33 times the standard deviation as the cutoff point was to ensure that under random variability, for any distribution not too different from a normal distribution, only one per cent of the engine family would be expected to exceed the limit.¹⁶ In other words, if a manufacturer had to reduce his average engine family emissions below the standard, the reason would be attributable to a noncomplying subgroup or a significant quality control problem.¹⁷

General Motors' last objection focused on quality audit testing for 1979 engine families certified on the basis of 1978 emissions data. GM doubted that sufficient lead time existed in which to make changes to enable these engine families, which had been quality audit tested according to the now deleted 90% pass requirement, to pass the averaging version of the quality audit test. General Motors proposed that the waiver be granted only on the condition that these 1979 vehicles be subject to the 1978 assembly line test procedures, which included the 90% pass requirement as a quality audit testing option.¹⁸

I do not find this objection to be persuasive and cannot accept GM's proposal. General Motors has only testified that only one engine family might not be able to meet the quality audit test requirements. This is insufficient information on which to base a finding that there is insufficient lead time to implement, in general, the requisite procedures.

Based on the foregoing review of the manufacturers' comments, I cannot find that California's 1979 assembly line test procedures are not consistent with section 202(a) of the Act.

IV. FINDINGS AND DECISION

Having given due consideration to the public record, I have determined that I cannot make the findings required for a denial of a waiver under section 209 (b)(1) to the Act. Therefore, I hereby waive application of section 209(a) of the Act of the State of California with respect to its assembly line test procedures for 1979 model year passenger cars, light duty trucks

¹⁵ California State Air Resources Board, *Staff Report No. 77-26-1* at 13-15 (November 18, 1977). ("hereinafter *Staff Report No. 77-26-1*").

¹⁶ *Id.* at 19-21; Memorandum from Barry D. Nussbaum to James McNab III (October 25, 1978).

¹⁷ *Tr.* 31, 62.

¹⁸ *Tr.* 116, 120; Letter from Mr. T. M. Fisher, Director, Automotive Emission Control, General Motors, to Mr. B. R. Jackson, Director, MSED, EPA (June 15, 1978).

and medium duty vehicles, set forth in section 2057 of Title 13 of the California Administrative Code, adopted February 16, 1978, and in "California Assembly Line Test Procedures for 1979 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," dated December 19, 1977 and adopted February 16, 1978.

My decision to grant the waiver will affect not only persons in California but also the manufacturers located outside the State who must comply with California's enforcement procedures in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this decision is of nationwide scope and effect.

A copy of the above standards and procedures, as well as the record of the hearing and those documents used in arriving at this decision, is available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, California 95812.

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

[FR Doc. 79-4215 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1056-1; OPP-50353A]

AMENDMENT TO EXPERIMENTAL USE PERMIT

In FR Doc. 77-36257, published Tuesday, December 20, 1977 (42 FR 63810), information appeared pertaining to the issuance of experimental use permit no. 524-EUP-29, to the Monsanto Company. At the request of the company, that permit has been amended to include the States of Connecticut, Maine, Massachusetts, and Rhode Island. The permit has been further amended to allow the use of an additional 615 pounds of the active ingredient, the herbicide glyphosate. The permit now allows the use of a total of 2,115 pounds of glyphosate.

Dated: February 1, 1979.

DOUGLAS D. CAMPT,
Director, Registration Division.
[FR Doc. 79-4216 Filed 2-6-79; 8:45 am]

⁷ *Tr.* 156.

⁸ *Tr.* 185-166. Letter from Kingsley Macomber, General Counsel, CARB, to Benjamin R. Jackson, [Director,] Mobile Source Enforcement Division (MSED), EPA, 6 (June 16, 1978); See State of California Air Resources Board, "Notice of Proposed Minor Changes to the Air Resources Board's Assembly-Line Test Procedures, 1979 Model Year" (July 6, 1978).

⁹ *Tr.* 118, 119, 125.

¹⁰ *Tr.* 113, 114-115, 121-122.

¹¹ *Tr.* 112, 115.

¹² 41 Fed. Reg. 44209, 44210 (October 7, 1976).

¹³ *Tr.* 113-114, 118, 119.

¹⁴ *Tr.* 118.

[6560-01-M]

[FRL 1054-2; OPP-00085A]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA) SCIENTIFIC ADVISORY PANEL

Open Meeting—Change in Agenda

On Monday, January 29, 1979, notice of the February 14-15, 1979 special subcommittee meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel was published in the FEDERAL REGISTER (44 FR 5712). The agenda should be amended as follows:

In addition to the upcoming subcommittee meeting, there will also be a regular meeting of the Panel during the afternoon of February 14. The Panel will formally convene in regular session to complete review action for conclusion of the rebuttable presumption against registration (RPAR) on pronamide.

The subcommittee will meet as originally scheduled during the morning of February 14 and all day on February 15 to discuss drafts of two Subparts of the Guidelines for Registering Pesticides in the United States.

AUTHORITY: Section 25(d) of FIFRA, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 138) and Sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).

Dated: January 31, 1979.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 79-4221 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1054-1; OPP-50401]

ISSUANCE OF EXPERIMENTAL USE PERMITS

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 21137-EUP-5. EM Laboratories, Inc., Elmsford, N.Y. 10523. This experimental use permit allows the use of sixty pounds of the insecticide chlorthiophos on almonds and peaches to evaluate control of the peach twig borer and Oriental fruit moth. A total of twenty-five acres is involved. The experimental use permit is effective from January 19, 1979 to January 19, 1980. (PM-12, Room: E-229, Telephone: 202/426-9425)

No. 21137-EUP-6. EM Laboratories, Inc., Elmsford, N.Y. 10523. This experimental use permit allows the use

of sixty pounds of the insecticide chlorthiophos on almonds and peaches to evaluate control of the peach twig borer and Oriental fruit moth. A total of twenty-five acres is involved. This program and the one above are authorized only in the State of California. This experimental use permit is also effective from January 19, 1979 to January 19, 1980. The permits will use same active ingredient, but different formulations. The permits are being issued with the limitation that all treated crops are destroyed or used for research purposes only. (PM-12, Room: E-229, Telephone: 202/426-9425)

No. 6704-EUP-20. U.S. Department of the Interior, Washington, D.C. 20240. This experimental use permit allows the use of one hundred pounds of the rodenticide zinc phosphid on sugarcane fields to evaluate control of the cotton rat and roof rat. A total of 360 acres is involved; the program is authorized only in the State of Florida. The experimental use permit is effective from January 19, 1979 to April 1, 1980. A permanent tolerance for residues of the active ingredient in or on sugarcane has been established (40 CFR 180.284). (PM-16, Room E-229, Telephone: 202/755-9315).

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: January 26, 1979.

HERBERT HARRISON,
Acting Director,
Registration Division.

[FR Doc. 79-4220 Filed 2-6-79; 8:45 am]

[6560-01-M]

[FRL 1054-5]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of Texas

Pursuant to section 111 of the Clean Air Act, as amended, the Administrator promulgated regulations establishing standards of performance for new stationary sources (NSPS). Pursuant to section 112 of the Clean Air Act, as amended, the Administrator promulgated national emission standards for hazardous air pollutants (NESHAPS). Sections 111(c) and 112(d) of the Act direct the administrator to delegate authority to implement and enforce NSPS and NESHAPS to any State which has submitted adequate procedures. Nevertheless, under section 111(c)(2) and 112(d)(2), the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to a State.

On May 9, 1975, Dolph Briscoe, Governor, State of Texas, requested delegation of authority to implement and enforce NSPS and NESHAPS to the Texas Air Control Board. Included in the initial request was information on the Board's procedures and resources for implementation and enforcement of NSPS and NESHAPS. Subsequently, the Board incorporated by reference the provisions of NSPS and NESHAPS in Board Rule 23. After a thorough review of the request, the Regional Administrator determined that the State procedures and authority were adequate. Pursuant to the authority delegated to her by the Administrator, the Regional Administrator notified Governor Briscoe in the following letter that authority to implement and enforce NSPS and NESHAPS subject to the conditions set forth in the letter was delegated to the State of Texas on behalf of the Texas Air Control Board.

NOVEMBER 15, 1978.

HONORABLE DOLPH BRISCOE,
GOVERNOR OF TEXAS,
State Capitol Building,
Austin, Texas 78711.

DEAR GOVERNOR BRISCOE: This is in response to your letter of May 9, 1975 requesting delegation of authority for implementation and enforcement of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants to the Texas Air Control Board.

The pertinent laws of the State of Texas and the rules and regulations of the Texas Air Control Board have been reviewed and have been found to provide an adequate and effective procedure for implementation and enforcement of the New Source Performance Standards and National Emission Standards of Hazardous Air Pollutants by

the Texas Air Control Board and the State of Texas. The resources and capabilities of the Texas Air Control Board have been found to be adequate to implement and enforce the program.

Therefore, by virtue of authority granted by the Administrator, I hereby delegate authority to the Texas Air Control Board to implement and enforce New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, pursuant to Sections 111(d) and 112(d), respectively, of the Clean Air Act, subject to the conditions and limitations stated in this letter. Except as specifically limited in this letter, all of the authority and responsibilities of the Administrator or the Regional Administrator which are found in 40 CFR Part 60 and 40 CFR Part 61 as of the date of this letter are delegated to the Texas Air Control Board. Any of such authority and responsibilities may be redelegated by the Board to its Executive Director or staff.

The conditions under which this authority is delegated are the following:

1. The Texas Air Control Board and the Region 6 office of the Environmental Protection Agency (EPA, Region 6) will develop a system of communication sufficient to guarantee that each office is fully informed and current regarding the compliance status of the subject sources. Initially, this communication will take the form of monthly worksheets to be provided by EPA, Region 6, to the Texas Air Control Board for completion. Attached is a sample page of the worksheet for sources subject to New Source Performance Standards. Attachment 2 is a sample page of the worksheet for sources subject to National Emission Standards for Hazardous Air Pollutants. These worksheets identify each source by name and state account number. The Texas Air Control Board will report any actions taken regarding each source and update the information shown regarding each source's compliance status and procedural status. These reports should be submitted to EPA by the 15th of each month.

It is understood that this system of communication is an interim method of reporting until the Texas Air Control Board can implement its new facility tracking system now under development. However, this interim method of reporting will provide all the information necessary regarding each source until a more permanent reporting system can be agreed on by the Texas Air Control Board and EPA, Region 6.

2. Implementation and enforcement of the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in the State of Texas will be the primary responsibility of the Texas Air Control Board. If the State of Texas or the Texas Air Control Board determines that such implementation or enforcement is not possible or feasible, either with respect to an individual source, a class of sources, or generally, the Texas Air Control Board shall within 30 days notify EPA, Region 6, of such impossibility or infeasibility so that EPA may timely exercise its concurrent authority with respect to sources within the State of Texas.

3. The Texas Air Control Board shall give notice to EPA, Region 6, of the initiation of any enforcement proceeding, administrative or judicial, with respect to any New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants, or any source subject thereto. This

condition may be satisfied by submitting a copy of any such initiation of proceedings before or at the time of the service of such notice on the affected party or facility.

4. Acceptance of this delegation for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants promulgated as of the date of this letter does not allow the State of Texas and the Texas Air Control Board to receive automatic delegation of future standards and requirements. Such delegations must be requested as future standards are promulgated.

5. Upon written approval of the Regional Administrator of the EPA, Region 6, the Texas Air Control Board may subdelegate its authority to implement and enforce New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants to air pollution control authorities in the State when such authorities have demonstrated that they want the authority and have the resources and capabilities to exercise it. If subdelegation approval is granted, appropriate address changes will be made in the FEDERAL REGISTER.

6. Acceptance of this delegation constitutes agreement by the Texas Air Control Board to follow all interpretations past and future, made by EPA of 40 CFR Parts 60 and 61 including determinations of applicability. The Texas Air Control Board agrees to consult with the EPA Region 6 on questions of interpretations of the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. A copy of each interpretation made by the Texas Air Control Board shall be sent to EPA, Region 6.

7. The State of Texas and the Texas Air Control Board are required to follow the provisions of 40 CFR Part 60 and are not authorized to grant any exemption, variance, or waiver from compliance with any provision of 40 CFR Part 60, except for the waiver of emission tests authorized in 40 CFR 60.8(b). A copy of any waiver of emission tests shall be sent to EPA, Region 6. Should the State of Texas or the Texas Air Control Board grant any other exemption, variance, or waiver to any source or category of sources, pursuant to any State law, regulation, or practice, the Texas Air Control Board shall immediately notify EPA, Region 6, of the granting of such exemption, variance or waiver and shall notify any source affected by such an exemption, variance or waiver that the State is not authorized to grant any exemption, variance or waiver from compliance with Federal requirements. EPA may consider any source receiving such relief to be violating or threatening to violate the applicable federal regulation and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of any exemption, variance, or waiver by the State of Texas or the Texas Air Control Board shall also constitute grounds for revocation of delegation by EPA, in whole, or in part, in the discretion of the Regional Administrator of EPA, Region 6.

8. The State of Texas and the Texas Air Control Board are required to follow the provisions of 40 CFR Part 61 and are not authorized to grant any exemption, variance, or waiver from compliance with any provision of 40 CFR Part 61, except for the waiver of emission tests authorized in 40 CFR 61.13. A copy of any waiver of emission tests shall be sent to EPA, Region 6. Should

the State of Texas or the Texas Air Control Board grant any other exemption, variance, or waiver to any source or category of sources pursuant to any State law, regulation, or practice, the Texas Air Control Board shall immediately notify EPA, Region 6 of the granting of such exemption, variance, or waiver that the State is not authorized to grant any exemption, variance or waiver from compliance with Federal requirements. EPA may consider any source receiving such relief to be violating or threatening to violate the applicable federal regulation and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of any other exemption, variance or waiver by the State of Texas or the Texas Air Control Board shall also constitute grounds for revocation of delegation by EPA, in whole or in part, in the discretion of the Regional Administrator of EPA, Region 6.

9. If any time there is a conflict between any State regulation and any provision of 40 CFR Part 60 or 61, the federal regulation must be applied to the extent that it is more stringent than that of the State. If the State of Texas or the Texas Air Control Board does not have the authority to enforce the more stringent federal regulation, the Texas Air Control Board shall immediately notify EPA, Region 6, pursuant to condition 2, above. The delegation may be revoked by EPA, Region 6, in whole or in part, in the event any such conflict makes implementation and enforcement of New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants administratively impractical.

10. For New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, the State of Texas and the Texas Air Control Board shall utilize the methods and means of determining compliance specified in 40 CFR Part 60, including requiring performance tests within the time limit of 40 CFR 60.8, and 40 CFR Part 61. The performance tests are to be conducted at normal maximum production. All requests from sources for equivalent or alternate methods shall be forwarded to EPA, Region 6, with or without a recommendation. Authority is delegated to approve minor modifications to the reference tests methods during either a pretest meeting or the actual sampling period. These minor modifications would have to produce results essentially identical to the referenced method results.

Approval of these minor modifications should be based on sound engineering judgment. Under no circumstances are modification to be used which might result in the non-uniform application of the standards. In the event the State of Texas or the Texas Air Control Board is unable or unwilling to utilize the methods specified in 40 CFR Parts 60 and 61, the notification requirements of condition 2, above, shall apply.

11. The TACB shall submit to EPA its quality assurance procedures which it plans to follow in enforcing and implementing the NSPS and NESHAP. As part of a good quality assurance program, the TACB shall conduct a pretest meeting with each source and shall observe each performance test.

12. At a minimum, the following records shall be maintained for each NSPSA and NESHAP performance test.

(a) Record or minutes of pretest meeting, to include the approval or disapproval of requested modifications to reference methods.

(b) Observer's report for the performance test, to include operating parameters of the affected process and control equipment.

(c) Evaluation of the performance test report, to include a recommendation whether or not the performance tests are acceptable.

13. If the Regional Administrator determines that, because of a State law or Board order, regulation, policy, practice, or procedure, the implementation and enforcement of the New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants is inadequate, or not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Texas Air Control Board.

14. In any instance where the State is unable under its own authority to obtain data or other information necessary to implement New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in the State, the State shall immediately so notify EPA, so that EPA may take action necessary to secure such data.

15. The State of Texas and the Texas Air Control Board shall permit access to and inspection by employees and agents of EPA of any and all reports or other records required by or pertaining to the implementation or enforcement of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in the State of Texas. Access and inspection of reports and records shall be at any office where such records or reports may be filed, during the regular office hours for such office. Unless impractical to do so, the State of Texas and the Texas Air Control Board shall provide copies of such inspections or records upon request by EPA. If reproduction of such reports or records by the State of Texas or the Texas Air Control Board is impractical, the State of Texas and the Texas Air Control Board shall permit EPA to arrange for copies of such reports or records to be made.

16. If a claim of confidentiality or any other reason should ever legally prevent the State of Texas and the Texas Air Control Board from providing to EPA any and all information required by or pertaining to the implementation or enforcement of New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants, the Texas Air Control Board shall, upon request, assist EPA, Region 6, in obtaining that information directly from the source. As a minimum, such assistance shall consist of providing to EPA an identification of the nature of the information withheld, adequate to allow EPA to identify to the source the information which is to be sent directly to EPA.

17. Emission data must be made available to the public by the Texas Air Control Board. "Emission data" is defined in 40 CFR 2.301(a)(2). Emission data is to be correlated with applicable emission limitations or other measures in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions which are allowable under the applicable emission limitations or other measures. If any information which is defined as emission data is found to be not available to the public by reason of State law or other legal requirement, the Texas Air Control Board shall so notify EPA, Region 6, so that EPA may take the action necessary to release such data.

(a) EPA and the Texas Air Control Board each as an independent legal responsibility to ensure compliance by sources of air pollutants with the requirements of the New Source Performance Standards and the National Emission Standards for Hazardous Air Pollutants.

(b) EPA and the Texas Air Control Board each has the right and duty to select which sources covered it subjects to inspections and source tests and when it inspects and tests.

(c) EPA and the Texas Air Control Board, without participation by the other, may make source tests and inspections.

(d) EPA and the Texas Air Control Board, to the extent that it is reasonable, will coordinate inspections and source tests and will share results of these inspections and source tests with the other.

19. All matters in process at the time of delegation of authority may be processed through to completion by EPA, Region 6, or may, at the request of the Texas Air Control Board and in the discretion of EPA, Region 6, be transferred to the Texas Air Control Board for completion. Appropriate reproduction of pertinent file material in the EPA, Region 6, files in relation to source regulation under New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants shall be provided through mutual cooperation of the staffs of the respective offices.

A notice of this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that effective immediately all reports, applications, submittals, and communications required pursuant to the Federal New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants by sources located in the State of Texas should be submitted to the Texas Air Control Board at 8520 Shoal Creek Boulevard, Austin, Texas 78758. Any such reports which have been or may be received by EPA, Region 6, will be promptly transmitted to the Texas Air Control Board.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State of Texas written notice of objection within ten days of the date of receipt of this letter, the State of Texas and the Texas Air Control Board will be deemed to have accepted all of the terms of the delegation.

Sincerely,

ADLENE HARRISON,
Regional Administrator (6A).

cc: Mr. Bill Stewart, Executive Director, Texas Air Control Board, 8520 Shoal Creek Blvd., Austin, TX 78758.

Copies of the request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region 6 office, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Effective immediately, all reports, applications, submittals, and commu-

nications required pursuant to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) should not be submitted to the Environmental Protection Agency, Region 6 office, but instead should be submitted to the State Agency at the following address: Texas Air Control Board, 8520 Shoal Creek Boulevard, Austin, Texas 78758.

This Notice is issued under the authority of Sections 111, 112 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7411, 7412 and 7601.

Dated: November 15, 1978.

ADLENE HARRISON,
Regional Administrator,
Region 6.

[FR Doc. 79-4222 Filed 2-6-79; 8:45 am]

[6560-01-M]

IOTS 0880005; FRL 1055-71

TRANSFER OF TSCA INVENTORY INFORMATION TO CONTRACTOR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data transfer.

SUMMARY: The Environmental Protection Agency will transfer data submitted by manufacturers and importers of chemical substances under the Toxic Substances Control Act (TSCA) Inventory Reporting Regulations to Informatics, Incorporated and through Informatics to its subcontractor, Value Engineering. The data transferred will not include any information about chemical substances whose identities have been claimed as confidential. Informatics has a contract with EPA to maintain and manage a computer data base for the Inventory, and Value Engineering, Informatics' subcontractor, will manage and operate the computer data center.

DATE: A partial information transfer will take place no sooner than the sixth working day after publication of this notice and will continue in controlled stages.

FOR FURTHER INFORMATION CONTACT:

John B. Ritch, Jr., Director, Industry Assistance Office (TS-799) EPA, 401 M Street, SW., Washington, D.C. 20460, Phone: 800-424-9065 or 554-1404 (Washington, D.C.).

SUPPLEMENTARY INFORMATION: Under the TSCA Inventory Reporting Regulations (40 CFR 710; 42 FR 64572; Dec. 23, 1977), manufacturers and importers of chemical substances reported information concerning the substances, their production sites, and

their production volumes. This information was reported on the TSCA Inventory Reporting Forms A, B, and C and was sent to Chemical Abstracts Service in Columbus, Ohio, which compiled the information for computer processing.

Informants, Incorporated, under contract number 68-01-3862, is responsible for maintaining and managing this Inventory computer data base.

Informatics will also manage a computer facility for the Office of Toxic Substances. Until this permanent facility is completed, a computer at the facilities of Value Engineering, Informatics' subcontractor, will be used for information processing, on a dedicated basis. Value Engineering is therefore subject to the same security provisions as Informatics.

Pursuant to 40 CFR 2.306(j), it has been determined that it is necessary for the Inventory information to be handled by Informatics and Value Engineering in order for them to satisfactorily perform the contract. Informatics' contract and the Value Engineering subcontract contain the required clauses for the protection of this information.

Pursuant to the EPA TSCA Confidential Business Information Security Manual, Informatics and Value Engineering have been authorized to have access to TSCA Confidential Business Information. A security plan for Informatics and Value Engineering has also been approved. EPA's Security and Inspection Division (SID) and Management Information and Data Systems Division (MIDSD) have conducted the required inspections of the Informatics and Value Engineering facilities and have found them to be in compliance with the requirements of the TSCA Confidential Business Information Security Manual.

The transfer of information will take place in stages. The information to be transferred consists of the data taken from Forms A, B, and C. It does not include any information taken from Form C on which the submitter claimed the chemical identity as confidential. That information will be maintained by EPA in a separate system.

Dated: February 2, 1979.

STEVEN D. JELLINEK,
Assistant Administrator
for Toxic Substances.

[FR Doc. 79-4214 Filed 2-6-79; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[No. AC-52]

FIRST SAVINGS AND LOAN ASSOCIATION,
NEW BRUNSWICK, N.J.

Notice of Approval of Conversion Application
(Notice of Final Action)

JANUARY 31, 1979.

Notice is hereby given that on January 18, 1979, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 79-32 approved the application of First Savings and Loan Association, New Brunswick, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the office of the Secretary of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 79-4146 Filed 2-6-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

Notice of Proposed De Novo Nonbank
Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dis-

pute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than March 1, 1979.

A. *Federal Reserve Bank of Boston*, 30 Pearl Street, Boston, Massachusetts 02106:

INDUSTRIAL NATIONAL CORPORATION, Providence, Rhode Island (consumer finance and insurance activities; Florida): To engage, through its subsidiaries, Southern Discount Company and SDA Corporation, in consumer finance activities; and insurance agency activities for the sale of life, accident and health, and property insurance directly related to its extensions of credit. These activities would be conducted from an office in Kissimmee, Florida, and the geographic area to be served is Osceola County, Florida.

B. *Federal Reserve Bank of Richmond*, 701 East Byrd Street, Richmond, Virginia 23261:

MERCANTILE BANKSHARES CORPORATION, Baltimore, Maryland (insurance activities; Maryland, Delaware): To act, through its subsidiary, Mercantile Mortgage Corporation, as insurance agent or broker for individual policies (Maryland) or administrator for group policies (Delaware) with respect to the provision of life insurance directly related to its extensions of credit. These activities would be conducted from offices in Salisbury, Waldorf, Severna Park, Parkville, and Baltimore, Maryland, and Wilmington, Delaware, and the geographic areas to be served are within radiuses of between 20 and 30 miles from those offices.

C. *Federal Reserve Bank of Kansas City*, 925 Grand Avenue, Kansas City, Missouri 64198:

MISSOURI BANC-MANAGEMENT, INC., Kansas City, Missouri (insurance activities; Missouri): To act as insurance agent for the sale of reducing term life insurance, level term life insurance on single payment demand notes, and accident and health insurance, directly related to extensions of credit by its subsidiary bank, Stadium Bank. These activities would be conducted at the premises of the subsidiary bank in Kansas City, Missouri, and the geographic area to be served is the Kansas City, Missouri metropolitan area.

D. *Federal Reserve Bank of San Francisco*, 400 Sansome Street, San Francisco, California 94120:

HAWAII BANCORPORATION, INC., Honolulu, Hawaii (insurance activities; Hawaii): To act, through its subsidiary, Finance Hawaii, Inc., as agent or broker for the sale of life, accident and health, and property and casualty insurance directly related to its extensions of credit. These activities would be conducted from offices in Honolulu and Hilo, Hawaii, and the geographic areas to be served are Honolulu and Hawaii Counties, Hawaii.

E. *Other Federal Reserve Banks*: None.

Board of Governors of the Federal Reserve System, January 31, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-4155 Filed 2-6-79; 8:45 am]

[6210-01-M]

COMMUNITY BANCORP

Formation of Bank Holding Company

Community Bancorp, Creve Coeur, Missouri, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Community Bank of Morrison, Morrison, Missouri. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than March 2, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 1, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the board.

[FR Doc. 79-4153 Filed 2-6-79; 8:45 am]

[6210-01-M]

FIRST BANCORP, INC. Acquisition of Bank

First Bancorp, Inc., Corsicana, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Forney Bank & Trust Company, Forney, Texas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the reserve Bank to be received not later than February 28, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 31, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-4154 Filed 2-6-79; 8:45 am]

[6820-24-M]

GENERAL SERVICES ADMINISTRATION

[Temporary Regulation E-561]

SECRETARY OF DEFENSE

Federal Property Management Regulations; Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in conjunction with the Administrator of General Services in an electric rate increase proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Georgia Public Service Commission involving the application of the Georgia Power Company for an electric rate increase.

b. The Secretary of Defense may redelegate this authority to any officer,

official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

JAY SOLOMON,
*Administrator of
General Services.*

JANUARY 16, 1979.

[FR Doc. 79-4107 Filed 2-6-79; 8:45 am]

[6820-24-M]

[Temporary Regulation E-571]

SECRETARY OF DEFENSE

Federal Property Management Regulations; Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the interests of the executive agencies of the Federal Government in a gas rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Louisiana Public Service Commission involving the application of the Arkansas Louisiana Gas Company for an increase in rates. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

JAY SOLOMON,
*Administrator of
General Services.*

JANUARY 16, 1979.

[FR Doc. 79-4108 Filed 2-6-79; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT
EDUCATION

Meeting

AGENCY: National Advisory Council
on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, Sec. 10(a)(2)).

DATE: March 16, 1979, 9:00 a.m. to 5:30 p.m.; March 17, 1979, 9:00 a.m. to 3:00 p.m.

ADDRESS: Crown Center Hotel, One Pershing Road, Kansas City, Missouri.

FOR FURTHER INFORMATION
CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St., N.W., Washington, D.C., 20004 (202/376-8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee shall be open to the public.

The proposed agenda includes:

Council procedures and organizational structure.
Orientation material development.
Program format and orientation.
April Council meeting.
Committee budget update.

Records shall be kept of all Council

proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C. 20004.

Signed at Washington, D.C. on January 31, 1979.

GARY A. EYRE,
Executive Director, National Ad-
visory Council on Adult Educa-
tion.

[FR Doc. 79-4109 Filed 2-6-79; 8:45 am]

[4110-02-M]

PRESIDENT'S COMMISSION ON FOREIGN LAN-
GUAGE AND INTERNATIONAL STUDIES

Hearings

AGENCY: President's Commission on Foreign Language and International Studies.

ACTION: Notice of hearings.

SUMMARY: This notice sets forth the schedules and proposed agendas of two forthcoming hearings of the President's Commission on Foreign Language and International Studies. It also describes the functions of the Commission. Notice of these hearings is required under the Federal Advisory Committee Act (5 U.S. Code, Appendix I Section 10 (a)(2)). This document is intended to notify the general public of its opportunity to attend.

DATE: February 23, 1979.

ADDRESS: World Affairs Council, 312 Sutter Street, San Francisco, California 94108, February 24, 1979, Colton Hall, Monterey City Council Chambers, Madison and Pacific Streets, Monterey, California 93940.

FOR FURTHER INFORMATION
CONTACT:

Nan Bell, Staff Director, 1832 M Street, NW., Suite 837, Washington, D.C. 20036 (202) 653-5817.

The President's Commission on Foreign Language and International Studies is established under Executive Order 12054 (April 21, 1978) and Section 9 (a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I). The Commission is directed to:

(A) Conduct such public hearings, inquiries, and studies as may be necessary to make recommendations to the President and the Secretary of Health, Education, and Welfare.

(B) The objectives of the Commission shall be to:

(1) Recommend means for directing public attention to the importance of foreign language and international studies for the improvement of communications and understanding with

other nations in an increasingly interdependent world;

(2) Assess the need in the United States for foreign language and area specialists, ways in which foreign language and international studies contribute to meeting these needs, and the job market for individuals with these skills;

(3) Recommend what foreign language area studies programs are appropriate at all academic levels and recommend desirable levels and kinds of support for each that should be provided by the public and private sectors;

(4) Review existing legislative authorities and make recommendations for changes needed to carry out most effectively the Commission's recommendations.

The hearing in San Francisco on February 23, 1979, from 8:45 a.m. to 4:45 p.m. will include the following agenda:

(1) Statement on background and mandate of the Commission;

(2) Statement on work and priorities of the Commission;

(3) Presentation on international education and foreign language instruction in the public schools;

(4) Concurrent panel discussions on international education in the schools, colleges and communities, foreign language education in the U.S., international exchanges, undergraduate and advanced training and research, business and international trade needs and ethnic studies.

The hearing will close with summaries of each panel's discussion.

The hearing in Monterey on February 24, 1979, from 10:00 a.m. to 5:00 p.m. will include the following agenda:

(1) Statement on background and mandate of the Commission;

(2) Statement on work and priorities of the Commission;

(3) Testimony from government officials and the general public concerning foreign language and international studies programs within the Department of Defense, with a focus on the Defense Language Institute/Foreign Language Center, Presidio of Monterey, California.

The hearings of the Commission are open to the public. Records will be kept of the proceedings and are available for public inspection at the office of the President's Commission on Foreign Language and International Studies, 1832 M Street, NW., Suite 837, Washington D.C. 20036.

Signed at Washington, D.C. on February 2, 1979.

NAN P. BELL,
Staff Director.

[FR Doc. 79-4135 Filed 2-6-79; 8:45 am]

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services
Administration for Public Services

FAMILY MEDIAN INCOME BY STATE

Eligibility for Social Services

Under the provision of sections 2002(a)(5)(B), 2002(a)(6) (A) and (B), and 2002(a)(14)(A) of title XX of the Social Security Act, promulgation is made of the median income of a family of four for each State, the District of Columbia, and the States as a whole, applicable to the period October 1, 1979 through September 30, 1980. For those States whose 1980 fiscal year begins before or after October 1, 1979, this promulgation is also applicable. The purpose of the promulgation is for determining the extent of Federal financial participation (FFP) in State expenditures under title XX. The above listed sections impose certain limitations with respect to the availability of FFP based upon the relationship of the income of the family of a service recipient to the median income of four in the State. The median incomes have been adjusted in accordance with regulations prescribed by the Secretary to take into account the size of the family.

Estimates of the median income of families of four persons for each State and the District of Columbia were developed by the Bureau of the Census. In developing the median income scale, the Bureau of the Census used three sources of data:

(1) the 1978 Current Population Survey, (2) the 1970 Census of Population, and (3) the per capital personal income estimates from the Bureau of Economic Analysis. The methodology for adjusting median income for families of different sizes is specified in 45 CFR 228.60.

The median income for a family of four, by State for fiscal year 1980—with calculation at the 80 percent, 90 percent, and 115 percent levels—is set forth below for use by States in establishing income ceilings and fee schedules under title XX of the Social Security Act:

MEDIAN INCOME FOR FAMILIES OF FOUR

State	Median income*	80 pct of median income	90 pct of median income	115 pct of median income
Alabama.....	16,629	13,303	14,966	19,123
Alaska.....	32,119	25,695	28,907	36,937
Arizona.....	19,101	15,281	17,191	21,966
Arkansas.....	15,068	12,054	13,561	17,328
California.....	20,858	16,686	18,772	23,587
Colorado.....	20,181	16,145	18,163	23,208
Connecticut.....	20,469	16,375	18,422	23,539
Delaware.....	18,245	14,596	16,421	20,982
District of Columbia.....	19,047	15,238	17,142	21,904
Florida.....	17,874	14,299	16,087	20,555
Georgia.....	16,835	13,468	15,152	19,360
Hawaii.....	21,718	17,374	19,546	24,976
Idaho.....	16,601	13,281	14,941	19,091
Illinois.....	20,243	16,194	18,219	23,279
Indiana.....	19,131	15,305	17,218	22,001
Iowa.....	18,441	14,753	16,597	21,207
Kansas.....	18,379	14,703	16,541	21,136
Kentucky.....	16,264	13,011	14,638	18,704
Louisiana.....	16,511	13,209	14,860	18,988
Maine.....	15,025	12,020	13,523	17,279
Maryland.....	21,193	16,954	19,074	24,372
Massachusetts.....	19,508	15,606	17,557	22,434
Michigan.....	20,908	16,726	18,817	24,044
Minnesota.....	20,715	16,572	18,644	23,822
Mississippi.....	14,635	11,708	13,172	16,830
Missouri.....	17,862	14,290	16,076	20,541
Montana.....	16,389	13,111	14,750	18,847
Nebraska.....	16,523	13,218	14,871	19,001
Nevada.....	20,308	16,246	18,277	23,354
New Hampshire.....	18,190	14,552	16,371	20,919
New Jersey.....	21,409	17,127	19,268	24,620
New Mexico.....	16,801	13,441	15,121	19,321
New York.....	18,216	14,573	16,394	20,948
North Carolina.....	16,252	13,002	14,627	18,690
North Dakota.....	16,008	12,808	14,407	18,409
Ohio.....	19,195	15,356	17,276	22,074
Oklahoma.....	17,144	13,715	15,430	19,716
Oregon.....	19,771	15,817	17,794	22,737
Pennsylvania.....	18,348	14,678	16,513	21,100
Rhode Island.....	17,910	14,328	16,119	20,597
South Carolina.....	16,573	13,253	14,916	19,059
South Dakota.....	15,733	12,586	14,160	18,093
Tennessee.....	15,677	12,542	14,109	18,029
Texas.....	18,930	15,144	17,037	21,770
Utah.....	18,250	14,600	16,425	20,988
Vermont.....	16,351	13,105	14,743	18,838
Virginia.....	19,244	15,395	17,320	22,131
Washington.....	20,207	16,168	18,186	23,238
West Virginia.....	16,793	13,434	15,114	19,312
Wisconsin.....	20,109	16,087	18,098	23,125
Wyoming.....	20,755	16,604	18,680	23,868

*Median income based on 1977 data.

NOTE.—The median income for a family of four in the 50 States and the District of Columbia, applicable to the period October 1, 1979 through September 30, 1980, \$18,723.

(Catalog of Federal Domestic Assistance Program No. 13.771 Social Services for Low Income and Public Assistance Recipients.)

Dated: January 19, 1979.

ERNEST OSBORNE,
Commissioner,
Administration for Public Services.

Approved: January 26, 1979.

ARABELLA MARTINEZ,
Assistant Secretary for
Human Development Services.

[FR Doc. 79-4026 Filed 2-6-79; 8:45 am]

[4110-08-M]

National Institutes of Health
AGING REVIEW COMMITTEE
Meeting

Pursuant to Pub. L. 92-463, notice is

hereby given of the meeting of the Aging Review Committee, National Institute on Aging, on March 22, 23, 1979, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Md.

The meeting will be open to the public from 9:00 a.m. to 10:00 a.m. on March 22, for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provision set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 22, from 10:00 a.m. to adjournment on March 23, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Suzanna H. Porter, Committee Management Officer, NIA, Building 31, Room 5C07, National Institutes of Health, Bethesda, Maryland, Area Code 301-496-5345, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes of Health)

Dated: January 30, 1979.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4160 Filed 2-6-79; 8:45 am]

[4110-08-M]

ANIMAL RESOURCES REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463 notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, March 14, 1979, Conference Room 104, Bldg. 14G, National Institutes of Health, Bethesda Maryland 20014.

The meeting will be open to the public on March 14 from 11:00 a.m. to adjournment, during which time there will be a brief staff presentation on the current status of the Primate Research Centers Program. The Committee will select future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 14 from 8:30 a.m. to 11:00 a.m. for the review, discussion, and evaluation of individual grant applications and a National Research Service Award application, submitted to the Primate Research Centers Program. These applications and the discussions could reveal confidential trade secrets

or commercial property such as patentable material and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B13, Bldg. 31, National Institutes of Health, Bethesda Maryland 20014, (301) 496-5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Dennis O. Johnsen, Executive Secretary of the Animal Resources Review Committee, Room 5B55, Bldg. 31, National Institutes of Health, Bethesda Maryland 20014, (301) 496-5175, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.306, National Institutes of Health)

Dated: January 30, 1979.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4158 Filed 2-6-79; 8:45 am]

[4110-08-M]

BIOMEDICAL LIBRARY REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee, National Library of Medicine, on March 14-15, 1979, from 8:30 a.m. to 5:00 p.m. on March 14, and from 8:30 a.m. to adjournment on March 15, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public from 8:30 to 11:00 a.m. on March 14 for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 14 from 11:00 a.m. to 5:00 p.m., and from 8:30 a.m. to adjournment on March 15 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Division of Biomedical Information Support, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20014, Telephone Number: 301-496-4191, will provide summaries of the meeting, ros-

ters of committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—National Institutes of Health)

Dated: January 30, 1979.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4164 Filed 2-6-79; 8:45 am]

[4110-08-M]

CANCER CONTROL MERIT REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Merit Review Committee, National Cancer Institute, March 26, 1979, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20014. Except as noted below, this meeting will be open to the public on March 26, 1979, from 8:30 a.m.—5:00 p.m., to review contract progress reports from: Jefferson Medical College, American College of Radiology, Hawaii State Department of Health, and Vermont State Department of Health. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public approximately half an hour in the morning before lunch to discuss individuals associated with Jefferson Medical College, and approximately half an hour before closing to discuss individuals associated with the American College of Radiology, Hawaii State Department of Health, and Vermont State Department of Health. These discussions could reveal personal information concerning individuals associated with the contracts, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Hugh E. Mahanes, Jr., Acting Executive Secretary, National Cancer Institute, Blair Building, Room 726, National Institutes of Health, Silver Spring, Maryland 20910 (301/427-7298) will furnish substantive program information.

Dated: January 29, 1979.

(Catalog of Federal Domestic Assistance Program No. 13.394, National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4162 Filed 2-6-79; 8:45 am]

[4110-08-M]

NATIONAL INSTITUTES OF HEALTH STUDY SECTIONS

Amended Notice of Meetings

Notice is hereby given of a change in the meeting date, place or time of the following National Institutes of Health Study Sections which were published in the FEDERAL REGISTER on January 9, 1979 (44 FR 2023).

The Allergy & Immunology Study Section was to have met February 16-18, 1979 at 8:45 a.m., but will meet February 15-18, 1979 at 7:00 p.m. at the Royal Inn, La Jolla, CA, the same location for which it was originally scheduled.

The Cardiovascular & Pulmonary Study Section was to have met March 6-10, 1979, at the Holiday Inn, Bethesda, MD but will meet March 6-7, 1979 at 8:00 a.m. at the Holiday Inn, Georgetown, DC, the same time for which it was originally scheduled.

The Experimental Therapeutics Study Section was to have met February 28-March 3, 1979 at 1:00 p.m. but will meet February 28-March 3, 1979 at 8:30 a.m. Kenwood Country Club, Bethesda, MD, the same dates and location for which it was originally scheduled.

The General Medicine A Study Section was to have met February 25-28, 1979, but will meet February 26-28, 1979 at 1:00 p.m. in Conference Room 8, Building 31C, Bethesda, MD, the same time and location for which it was originally scheduled.

The General Medicine B Study Section was to have met at the Embassy Row Hotel, Washington, DC, but will meet at the Dupont Plaza Hotel, Washington, DC, March 7-10, 1979 at 8:30 a.m., the same dates and time for which it was originally scheduled.

The Nutrition Study Section was to have met February 28-March 2, 1979 at 8:30 a.m., but will meet February 27-March 2, 1979 at 7:30 p.m. in Conference Room 7, Building 31C, Bethesda, MD, the same location for which it was originally scheduled.

The meetings will be open to the public for approximately one hour at the beginning of the first session of the first day of the meetings.

Dated: January 31, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4163 Filed 2-6-79; 8:45 am]

[4110-08-M]

SICKLE CELL DISEASE ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, March 15, 1979. The meeting will be held in Conference Room 4A, A-Wing, Building 31, National Institutes of Health, Bethesda, Maryland 20014. The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Building 31, Room 5A03, (301) 496-4236, will provide summaries of the meeting and rosters of Committee members.

Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR, NHLBI, NIH Federal Building, Room 504, (301) 496-6931, will furnish substantive program information.

Dated: January 31, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-4159 Filed 2-6-79; 8:45 am]

[4110-85-M]

Public Health Service

INTERNATIONAL CLASSIFICATION OF DISEASES

Availability of the 9th Revision

Effective January 1, 1979, classification of mortality data in the United States will be coded to the new Ninth Revision of the International Classification of Diseases (ICD-9).

The Ninth Revision of the International Classification of Diseases, (ICD-9), was adopted in 1975 by an International Conference convened by the World Health Organization. For mortality coding, the ICD-9 will be used as published by the World Health Organization without resort to an adaptation such as was used during the eighth revision (ICDA-8). The modification of the ICD-9 known as the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) will only be used in the United States for morbidity coding.

The two-volume set of the ICD-9 is available and can be purchased for \$31.25 from:

WHO Publication Center, 49 Sheridan Avenue, Albany, New York 12210.

In keeping with the tradition of actively promoting the recommendations of the World Health Organization for adoption of the decennial revisions of the ICD-9 for mortality purposes, the National Center for Health Statistics is offering training courses in cause-of-death coding. The Center has also provided each State Health Department with two complimentary copies of the new ICD-9.

FOR MORE INFORMATION, CONTACT:

Robert A. Israel, Head, WHO Center for Classification of Diseases for North America, National Center for Health Statistics, 3700 East-West Highway, Hyattsville, Maryland 20782.

ROBERT A. ISRAEL,
Deputy Director.

JANUARY 4, 1979.

[FR Doc. 79-4110 Filed 2-6-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 27658]

NORTHWEST PIPELINE CORP.

Pipeline Application

JANUARY 29, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for a right-of-way for a 4½-inch o.d. natural gas pipeline approximately 0.676 miles long across the following public lands in Garfield County, Colorado:

T. 5S., R. 102 W., 6th P.M.

Sec. 35

T. 6S., R. 102 W., 6th P.M.

Sec. 6

The proposed lateral pipeline will enable the applicant to convey natural gas from the Palmer Oil Federal #8-6 well to an existing Western Slope gathering system.

The purposes of this notice are: to inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application, and to allow any persons as-

serting a claim to the lands or having bona fide objections to the proposed natural gas pipeline right-of-way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objection must be filed with the Team Leader, Canon City-Grand Junction Team, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

RODNEY A. ROBERTS,
Leader Canon City-Grand Junction Team, Branch of Adjudication.

[FR Doc. 79-4109 Filed 2-6-79; 8:45 am]

[4310-84-M]

IDAHO WILDERNESS INVENTORY

Proposed Decision

Notice is hereby given that the Bureau of Land Management has completed the first phase of a wilderness inventory on certain public lands in Idaho. The inventory, following guidelines in the Bureau's Wilderness Inventory Handbook, was conducted in advance of the statewide inventory to protect potential wilderness values in the Black Butte area, an area proposed for a mining operation. The Black Butte area is approximately 17 miles north of Shoshone, Idaho, in the BLM Shoshone District.

PROPOSED DECISION

The Idaho State Director's proposed decision on the wilderness inventory is as follows:

Unit 54-2, Black Butte (4,326 acres). Unit was intensively inventoried, and portions on west side were found not meeting naturalness criteria due to rock removal within the community pit area and in a small area adjacent to the pit. An area of 4,061 acres is recommended for Wilderness Study Area designation. Although less than 5,000 acres in size, the unit has sufficient size to make practicable its preservation and use in an unimpaired condition, as required by the definition of wilderness in Sec. 2(c) of the Wilderness Act of 1964. A number of letters have been received concerning the possibility of including this area in the National Wilderness Preservation System.

A 90-day public review of the proposed decision will begin January 28, 1979, and conclude on April 27, 1979. To provide an opportunity for public discussion and review of the proposed

decision, a workshop has been scheduled for February 27, 1979, 7:00 p.m., at the Lincoln County Courthouse, Shoshone, Idaho.

For further information or to submit written comments on the wilderness inventory for the above unit, contact:

William L. Mathews, State Director, Bureau of Land Management, Federal Building, Box 042, 550 W. Fort Street, Boise, Idaho 83724.

Charles J. Haszler, District Manager, Shoshone District Office, Bureau of Land Management, P.O. Box 2 B, Shoshone, Idaho 83352, Telephone: 208-886-2208.

Dated: January 29, 1979.

T. G. BINGHAM,
Idaho State Director,
Bureau of Land Management.

[FR Doc. 79-4200 Filed 2-6-79; 8:45 am]

[4310-84-M]

IDAHO WILDERNESS INVENTORY

Proposed Decision

Notice is hereby given that the Bureau of Land Management has completed the first phase of a wilderness inventory on certain public lands in Idaho. The inventory, following guidelines in the Bureau's Wilderness Inventory Handbook, was conducted in advance of the statewide inventory in order to obtain wilderness data for inclusion in Bureau Planning System reports for the Sun Valley ES Planning Area. The planning area is located in the northern portion of the BLM Shoshone District.

PROPOSED DECISIONS SUN VALLEY ES PLANNING AREA

The Idaho State Director's proposed decision on the wilderness inventory is as follows:

CAMAS PLANNING UNIT

Unit 51-1 (9,430 acres). Numerous isolated parcels that clearly and obviously do not meet size criteria.

Unit 51-2 (11,340 acres). Numerous parcels that clearly and obviously do not meet size criteria.

Unit 51-3 (6,600 acres). Parcel is bisected by a mining road and clearly and obviously does not meet size criteria.

SUN VALLEY PLANNING UNIT

Unit 52-1 (40,710 acres). Numerous isolated parcels that clearly and obviously do not meet size criteria.

Unit 52-2 (16,590 acres). Numerous parcels that clearly and obviously do not meet size criteria.

Unit 52-3, Bunker Hill (11,220 acres). Unit was intensively inventoried and found not to meet naturalness criteria.

Unit 52-4, Ohio Gulch (6,720 acres). Unit was intensively inventoried and found not to meet naturalness criteria.

Unit 52-5, Sheep Creek (9,163 acres). Unit was intensively inventoried and southwestern portion found not to meet naturalness criteria. An area of 8,765 acres was recommended for Wilderness Study Area designation.

Unit 52-6, Dry Canyon (5,410 acres). Unit was intensively inventoried and recommended for Wilderness Study Area designation.

Unit 52-7, Lookout Mountain (7,244 acres). Unit was intensively inventoried and the western portion found not to meet naturalness criteria. An area of 6,297 acres is recommended for Wilderness Study Area designation.

MULDOON PLANNING UNIT

Unit 53-1 (52,140 acres). Numerous isolated parcels that clearly and obviously do not meet size criteria.

Unit 53-2 (1,020 acres). Numerous parcels that clearly and obviously do not meet size criteria.

Unit 53-3 (2,710 acres). Several parcels that clearly and obviously do not meet size criteria.

Unit 53-4, Little Wood River (4,265 acres). Unit was intensively inventoried and recommended for Wilderness Study Area designation. This unit is dependent upon the contiguous U.S. Forest Service RARE II area, 4-201, Pioneer Mountains (recommended by U.S.F.S. for wilderness designation) to meet the size criteria.

Unit 53-5, Friedman Creek (9,700 acres). Unit was intensively inventoried and the western portion found not to meet naturalness criteria. An area of 9,413 acres is recommended for Wilderness Study Area designation.

Unit 53-6 (13,790 acres). Unit was found to be bisected by several roads, with the remaining portions clearly and obviously not meeting the size or solitude and primitive recreation criteria.

Unit 53-7, Mountains End (5,665 acres). Unit was intensively inventoried and portions along the south boundary found not to meet naturalness criteria. An area of 5,411 acres is recommended for Wilderness Study Area designation.

Unit 53-8 (5,740 acres). Unit was found to be bisected by a road and clearly and obviously not meeting size criteria.

Unit 53-9 (6,640 acres). Unit found to be bisected by a road and clearly and obviously not meeting size criteria.

Unit 53-10 (9,980 acres). Unit found to be bisected by two roads and clearly and obviously not meeting size criteria.

A 90-day public review of this proposed decision will begin January 26, 1979, and conclude on April 27, 1979.

To provide an opportunity for public discussion and review of the proposed decision, the following workshops have been scheduled: February 28, 1979, 7:00 p.m., Wood River High School, Halley, Idaho. March 1, 1979, 7:00 p.m., Camas Co. High School, Fairfield, Idaho. March 6, 1979, 7:00 p.m., Carey School, Carey, Idaho.

For further information or to submit written comments on the wilderness inventory for the above units, contact:

William L. Mathews, State Director, Bureau of Land Management, Federal Building, Box 042, 550 W. Fort Street, Boise, Idaho 83724.

Charles J. Haszier, District Manager, Shoshone District Office, Bureau of Land Management, P.O. Box 2B, Shoshone, Idaho 83352, Telephone: 208-886-2208.

Dated: January 29, 1979.

T. G. BINGHAM,
Idaho State Director,
Bureau of Land Management.
[FR Doc. 79-4201 Filed 2-6-79; 8:45 am]

[4310-84-M]

[OR 20183]

OREGON

**Proposed Withdrawal and Reservation of
Lands**

The Department of Agriculture on behalf of the Forest Service on January 18, 1979, filed application Serial No. OR 20183 for the withdrawal of the following described lands from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, subject to valid existing rights:

WILLAMETTE MERIDIAN

**DESCHUTES AND WILLAMETTE NATIONAL
FORESTS**

Obsidian Flows and Dacite Domes Area

T. 17 S., R. 8 E., Unsurveyed,

Sec. 22, S½;

Sec. 23, S½;

Secs. 26 and 27;

Sec. 28, W½;

Sec. 29;

Sec. 30, E½;

Sec. 31, E½;

Sec. 32;

Sec. 33, W½;

Sec. 34;

Sec. 35, N½;

T. 18 S., R. 8 E.,

Sec. 3, Lots, 1, 2, 3, 4, S½N½, and S½, except that parcel of land in said S½ containing 10 acres, more or less, and identified as the Cascade Lakes Road Zone—Forest Road No. 46, withdrawn by FLO 2751 of August 13, 1962;

Sec. 10, NE¼, except that parcel of land containing 30 acres, more or less, and identified as the Cascade Lakes Road Zone—Forest Road No. 46, withdrawn by FLO 2751 of August 13, 1962.

The areas described aggregate, after making the aforesaid exceptions, approximately 4,578.60 acres in the Deschutes National Forest and approximately 1,620 acres in the Willamette National Forest, for a total of 6,198.60 acres in Deschutes and Lane Counties, Oregon.

The Forest Service desires that the lands be withdrawn and reserved for protection of their geologic, scientific, and scenic values.

For a period of 40 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below, on or before March 7, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16 B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when

effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) two years from the date of publication of this notice.

All communications (except public hearing requests) in connection with this proposed withdrawal should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 25, 1979.

HAROLD A. BERENDS,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 79-4202 Filed 2-6-79; 8:45 am]

[4310-84-M]

[OR 20029]

OREGON

**Notice of Proposed Withdrawal and
Reservation of Lands**

The Bureau of Land Management, Department of the Interior, on January 16, 1979, filed application Serial No. OR 20029 for the withdrawal of the following described lands from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights:

WILLAMETTE MERIDIAN

T. 10 S., R. 11 W.,

Sec. 30, Unnumbered Lot identified as Yaquina Head Lighthouse Reservation (formerly Cape Foulweather Lighthouse Reservation), except that parcel of land containing 4.5 acres, more or less, described as follows:

Commencing at the Southwest corner of Lot 3 of said Sec. 30;

Thence North 79°58'18" West 223.80 feet;

Thence North 35°45' West 735.90 feet;

Thence North 47°45' West 440.04 feet to the point of beginning;

Thence South 89°43'38" East 221.45 feet;

Thence North 352.5 feet;

Thence North 68° West 97.00 feet;

Thence North 99.00 feet;

Thence South 62° West 264.00 feet;

Thence North 66.00 feet;

Thence West 66.00 feet;

Thence South 32° West 158.40 feet;

Thence South 16°45' West 171.60 feet;

Thence South 16°45' East 264.00 feet;

Thence North 27° East 250.80 feet;

Thence South 47°45' East 150.00 feet to the point of beginning.

The area described contains, after making the aforesaid exception, 18.1 acres in Lincoln County, Oregon.

The land is a portion of the Yaquina Head Lighthouse Reserve and is presently withdrawn by Executive Order

of June 8, 1866. The U.S. Coast Guard has filed intent to relinquish and return to the public domain the land described above as it is no longer needed for lighthouse purposes. On acceptance of jurisdiction, the Bureau of Land Management desires that the land be reserved and designated as an outstanding natural area because of its unique scenic, scientific, educational, and recreational values.

For a period of 40 days from the date of publication of this notice (March 19, 1979), all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below, on or before March 8, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 235.16 B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also assure that the area sought is the minimum essential for the proposed use and provide for the maximum concurrent utilization of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

The above described lands are temporarily segregated from the operation of the public lands laws, including the mining laws but not the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. The segregative effect of this proposed withdrawal shall terminate upon (a) rejection of the application by the

Secretary, (b) withdrawal of the lands by the Secretary, or (c) two years from the date of publication of this notice. If the withdrawal is approved, the segregation will continue for the duration of the withdrawal.

The segregative effect and current administrative jurisdiction of the existing withdrawal are not affected by this proposal.

All communications (except public hearing requests) in connection with this proposed withdrawal should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 26, 1979.

HAROLD A. BERENDS,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 79-4203 Filed 2-6-79; 8:45 am]

[4310-84-M]

[Wyoming 86846]

WYOMING

Application

JANUARY 29, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 6% inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 112 W.,
Sec. 4, S $\frac{1}{2}$ SE $\frac{1}{4}$.

The proposed pipeline will transport natural gas from a point of extending their Lateral A-5 line located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ section 3 westerly to a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ section 9, T. 21 N., R. 112 W., Lincoln County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and
Minerals Operations.

[FR Doc. 79-4204 Filed 2-6-79; 8:45 am]

[4310-84-M]

[Wyoming 86850]

WYOMING

Application

JANUARY 29, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4% inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 28 N., R. 114 W.,
Sec. 8, Lot 1, 2 and 3;
Sec. 9, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The proposed pipeline will transport natural gas from the Fogarty Creek #10-8 well located within Lot 3 section 8 to a point of connection on Fed #3 and 4, Lot 17 section 4, T. 28 N., R. 114 W., Sublette County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and
Minerals Operations.

[FR Doc. 79-4205 Filed 2-6-79; 8:45 am]

[4310-84-M]

WYOMING

Commencement of Public Comment Period on Initial Wilderness Inventory

JANUARY 30, 1979.

This Notice announces the beginning of a 90-day public comment period concerning the initial wilderness inventory of public lands in Wyoming. Beginning on the date of this announcement and running until May 15, 1979, the public is invited to review and provide comments on the wilderness inventory of public lands in Wyoming. This initial inventory was officially begun by announcement in the FEDERAL REGISTER on November 10, 1978, and was conducted under the authority of section 603 of The Federal Land Policy and Management Act of October 21, 1976.

All public lands in Wyoming have been reviewed and those areas of 5,000 acres or more that are roadless have been identified. An analysis (situation evaluation) has been prepared for each such area (inventory unit). Each area has been tentatively placed into one of two categories using the criteria set forth in section 2(c) of The Wilderness Act of 1964. These are:

Category 1. Areas that may possibly meet the criteria and should receive further analysis.

Category 2. Areas that clearly and obviously do not meet the criteria for identification as wilderness study areas.

This tentative determination has been made base on the initial inventory and is subject to change based upon additional information which may be obtained from the public and from local, State, and Federal agencies.

All areas in category 1 have been delineated on a transparency (Overlay No. 1) to the 1:500,000 scale colored status map of Wyoming which is available at all BLM offices in Wyoming for public inspection, review, and comment. An additional transparency (Overlay No. 2) to the State map showing all inventory units including those which clearly and obviously do not meet the criteria for wilderness designation, is also available for inspection in all offices. All areas not delineated and numbered on the transparencies were tentatively determined to be either too small for consideration or are roadless. In some instances, areas of less than 5,000 acres of public lands have been analyzed. These include:

1. Public land islands.
2. Roadless areas adjacent to lands administered by other Federal agencies having responsibilities for wilderness inventory and management.

The above maps and overlays are available for purchase from the Wyoming State Office of BLM, at the address listed below, as follows:

1:500,000 scale colored status map	.....	\$5.00 ea. copy
Transparent Overlay No. 1	.....	\$4.00 ea. copy
Transparent Overlay No. 2	.....	\$4.00 ea. copy
Paper Copy Overlay No. 1	.....	\$2.50 ea. copy
Paper Copy Overlay No. 2	.....	\$2.50 ea. copy

The situation evaluation and a more detailed map of each inventory unit is on file at the respective District Offices and at the State Office in Cheyenne. These situation evaluations, along with the maps, are available for inspection at the District or State Office by appointment or at the open houses listed below.

To facilitate public review and comment on this initial inventory effort, the following schedule of open houses and public meetings is established.

OPEN HOUSES

Rawlins—February 15, 16, 1979, Rawlins District Office, 1300 Third St., Rawlins, WY, 10 a.m.-5 p.m., 7 p.m.-10 p.m.
 Rock Springs—February 20, 1979, Green River Resource Area Office, Hwy. 187 N., Rock Springs, WY, 1 p.m.-4:30 p.m., 7 p.m.-9:30 p.m.
 Kemmerer—February 21, 1979, Kemmerer Resource Area Office, Kemmerer, WY, 1 p.m.-4:30 p.m., 7 p.m.-9:30 p.m.
 Lander—February 21, 22, 1979 Lander Resource Area Office, Jett Bldg., Hwy 2875 So., Lander, WY, 10 a.m.-5 p.m., 7 p.m.-10 p.m.
 Worland—February 21, 1979, Stockgrowers State Bank, Hospitality Room, Worland, WY 2 p.m.-9 p.m., February 28, 1979, Worland District Office, 1700 Robertson St., Worland, WY, 1 p.m.-4:30 p.m., 7 p.m.-9 p.m.
 Buffalo—February 22, 1979, Buffalo Resource Area Office, Buffalo, WY, 1 p.m.-5 p.m., 7 p.m.-9 p.m.
 Greybull—February 22, 1979, Big Horn Federal Savings and Loan Bldg., Hospitality Room, Greybull, WY, 2 p.m.-9 p.m.
 Cody—February 27, 1979, Provident Federal Savings and Loan Bldg., Hospitality Room, Cody, WY, 2 p.m.-9 p.m.
 Pinedale—March 1, 1979, Pinedale Resource Area Office, Molyneux Bldg., Pinedale, WY, 1 p.m.-4:30 p.m., 7 p.m.-9:30 p.m.

PUBLIC MEETINGS

Pinedale—March 15, 1979, Pinedale Resource Area Office, Molyneux Bldg., Pinedale, WY, 7 p.m.
 Rawlins—March 15, 1979, Rawlins District Office, 1300 Third St., Rawlins, WY, 7 p.m.
 Casper—March 20, 1979, Natrona County Library, Crawford Room, 307 E. 2nd St., Casper, WY, 7:30 p.m.
 Lander—March 21, 1979, Lander Resource Area Office, Jett Bldg., Hwy. 287 So., Lander, WY 7 p.m.
 Rock Springs—March 22, 1979, Western Wyoming College, Room 204C, Administration Bldg., Rock Spring, WY, 7 p.m.
 Sheridan—March 22, 1979, Sheridan College, West End Cafeteria, Commons Bldg., Sheridan, WY, 7:30 p.m.
 Worland—March 22, 1979, Worland Sr. High School, Little Theater, Worland, WY, 7 p.m.
 Big Piney—March 27, 1979, City Library, Big Piney, WY, 7 p.m.
 Kemmerer—March 29, 1979, Senior Citizens Friendship Center, 105 Penney Ave., Kemmerer, WY, 7 p.m.

Those persons or organizational representatives, planning to participate and make oral comment at one or more of the above public meetings are urged to also submit written comments. Those wishing to submit comments other than at the public meetings are requested to send their comments to the State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

After the comment period closes in May, the Bureau will analyze the public response and prepare a decision setting forth those inventory units that will undergo further analysis in the inventory process. The map overlays will be modified to reflect this

decision. A FEDERAL REGISTER notice including this decision and other pertinent information will be published. Those lands not being designated for further analysis will be released from the constraints of interim management as set forth in section 603(c) of the Federal Land Policy and Management Act.

Additional information on this program is available on request from all BLM offices in Wyoming as listed below. These offices are also available for contact regarding input to the wilderness inventory.

State Director, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82001, 308-778-2220, ext. 2413.
 Worland District Office, District Manager, P.O. Box 119, 1700 Robertson Avenue, Worland, WY 82401, 307-347-6151.
 Grass Creek Resource Area.¹
 Washakie Resource Area.¹
 Cody Resource Area, Area Manager, P.O. Box 528, Federal Building 1131 13th, Cody, WY 82414, 307-587-2216.
 Rawlins District Office, District Manager, P.O. Box 670, 1300 Third Street, Rawlins, WY 82301, 307-324-7171.
 Divide Resource Area.¹
 Medicine Bow Resource Area.¹
 Lander Resource Area, Area Manager, P.O. Box 589, Lander, WY 82520, 307-332-4220.
 Rock Springs District Office, District Manager, P.O. Box 1869, Highway 187 N, Rock Springs, WY 82901, 307-382-5350.
 Green River Resource Area.¹
 Salt Wells Resource Area.¹
 Pinedale Resource Area, Area Manager, Molyneux Building, Pinedale, WY 82941, 307-367-4358.
 Kemmerer Resource Area, Area Manager, P.O. Box 632, Kemmerer, WY 83101, 307-887-3933.
 Casper District Office, District Manager, 951 Union Blvd., Casper, WY 82601, 307-265-5550, ext. 5101.
 Platte River Resource Area.¹
 Buffalo Resource Area, Area Manager, P.O. Box 670, Buffalo, WY 82834, 307-684-5586.
 Newcastle Resource Area, Area Manager, Highway 16 Bypass, Newcastle, WY 82701, 307-746-4453.

DELMAR D. VAIL,
Associate State Director.

[FR Doc. 79-4206 Filed 2-6-79; 8:45 am]

[4310-09-M]

Bureau of Reclamation

CONTRACT NEGOTIATIONS WITH THE MCGEE CREEK AUTHORITY

Intent to Negotiate a Contract for Repayment of Construction Costs

The Department of the Interior, through the Bureau of Reclamation, intends to negotiate a contract with the McGee Creek Authority for repayment of construction costs and oper-

¹Located at District Office.

ation and maintenance of a proposed dam and reservoir to be constructed on McGee Creek near Atoka in southeastern Oklahoma. The contract will be written pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187) and the Water Supply Act of 1958 (72 Stat. 319).

The McGee Creek Project was authorized by Congress, September 28, 1976, under Title VII of Pub. L. 94-423 in accordance with Federal Reclamation laws. The project will store, regulate, and convey water largely for municipal and industrial (M&I) use. It will also conserve and develop fish and wildlife resources, provide outdoor recreational opportunities, develop a scenic recreation area and a wildlife management area, and control floods.

The M&I water will be made available to Oklahoma City; the city of Atoka, Oklahoma; Atoka County; and rural areas in several southern Oklahoma counties. The contract will contain provisions which permit a partial deferral of interest for some of the M&I costs assigned to future water supply needs in the area, pursuant to the Water Supply Act of 1958 (72 Stat. 319).

Construction costs of the project (January 1978 prices) are estimated to be \$91 million. Some \$77 million is expected to be allocated to M&I and \$1 million to recreation and fish and wildlife. These costs will be repaid with interest over a 50-year period. The remaining \$13 million, allocated to other purposes, provide benefits to the general public and, therefore, will be nonreimbursable. These costs are subject to cost escalation and any increase will be allocated for repayment as appropriate.

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public.

For further information about scheduled meetings and copies of the proposed contract form, please contact Mr. Ira M. Stevens, Repayment and Economics Branch; Division of Water, Land, and Power; Bureau of Reclamation, Herring Plaza Box H-4377, Amarillo, Texas 79101, telephone no. (806) 376-2445. All meetings scheduled by the Bureau of Reclamation with a potential contractor for the purpose of discussing terms and conditions of a proposed contract shall be open to the general public as observers. Advance notice of such meetings shall be furnished only to those parties having previously furnished a written request for such notice to the office identified above at least 1 week prior to any meeting. All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and pro-

cedures of the Freedom of Information Act (80 Stat. 383) as amended.

Dated: February 1, 1979.

R. KEITH HIGGINSON,
Commissioner.

[FR Doc. 79-4139 Filed 2-6-79; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before January 31, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20243. Written comments or a request for additional time to prepare comments should be submitted by February 20, 1979.

NEW HAMPSHIRE

SULLIVAN COUNTY

Claremont, Warehouse No. 34, Sullivan Machinery Company, 43 River Street.

WILLIAM J. MURTAGH,
Keeper of the
National Register.

[FR Doc. 79-3940 Filed 2-6-79; 8:45 am]

[4310-70-M]

National Park Service

OBED WILD AND SCENIC RIVER, TENN.

Classification, Boundaries, Cooperative Agreement, and Development Plan

Pursuant to subsection 3(b) of the Wild and Scenic Rivers Act (82 Stat. 908), the stream classification, boundaries, and development plan for the Obed Wild and Scenic River in the State of Tennessee are published as hereinafter set forth, and shall become effective on January 29, 1979. The effective date follows by ninety (90) days the submission of the material printed below to the President of the Senate and Speaker of the House of Representatives, which occurred on October 31, 1978. In addition, there is also published a cooperative agreement between the Tennessee Wildlife Resources Agency and the National

Park Service for the purpose of establishing procedures for the development and management of those lands within the wild and scenic river corridor that are part of the Catoosa Wildlife Management Area, as required by section 301 of the Act of October 12, 1976 (Pub. L. 94-486; 90 Stat. 2329).

Dated: January 30, 1979.

JOE BROWN,
REGIONAL DIRECTOR,
SOUTHEAST
Region, National Park Service.

U.S. DEPARTMENT OF THE INTERIOR

ADDENDUM TO THE FINAL ENVIRONMENTAL STATEMENT, OBED WILD AND SCENIC RIVER, TENN.

Prepared by Denver Service Center, National Park Service, Department of the Interior

WILLIAM J. SHAW
Director, National Park Service.

1. DESCRIPTION OF THE PROPOSAL

A. BACKGROUND

Obed Wild and Scenic River was promulgated on October 12, 1976, by Public Law 94-486. The act authorizes the protection of 45.2 miles of the Obed River, Daddys Creek, and the Emory River in Morgan and Cumberland Counties, Tennessee. This portion of the Obed River system represents approximately one half of the river mileage included in the proposal submitted to Congress in the *Obed Wild and Scenic River Study* (U.S. Department of the Interior, Bureau of Outdoor Recreation, 1976b). This document is an addendum to the *Final Environmental Statement*, FES 76-53 (U.S. Department of the Interior, Bureau of Outdoor Recreation, 1976a) that accompanied the bureau report on the Obed System.

The addendum addresses the differences in land acquisition, administration, and development proposals resulting from P.L. 94-486. Broadly speaking, these differences are that development and administration are to be conducted by the National Park Service in cooperation with the Catoosa Wildlife Management Area rather than by the Tennessee Valley Authority and the state of Tennessee jointly; and that a 45.2-mile length of river corridor is to be protected, rather than the 100 miles previously specified.

Changes in the description of the environment based on recent information are also discussed in this addendum, along with the impacts and mitigating measures that result from the changes in land acquisition and administration and from minor changes in development proposals. For a complete description of the environment and analysis of impacts, consult FES 76-53.

B. PROPOSAL

1. LAND ACQUISITION

a. *Legislative Constraints.* The designation act (P.L. 94-486) authorized funds for land acquisition not to exceed \$2 million. The Wild and Scenic Rivers Act of 1908 (P.L. 542) dictates the following legislative conditions on the Obed Wild and Scenic River: "the boundaries shall include an average of not more than 320 acres per mile" and "an average of no more than 100

acres per mile" of fee title land. The total acreage as currently authorized could amount to as much as 14,464 acres. Of this, 4,520 acres could be in fee title. The Obed River system boundary as defined by P.L. 94-486 is "the segment from the western edge of the Catoosa Wildlife Management Area to the confluence with the Emory River; Clear Creek from the Morgan County line to the confluence with the Obed River; Daddys Creek from the Morgan County line to the confluence with the Obed River; and the Emory River from the confluence with the Obed River to the Nemo bridge as generally depicted and classified on the stream classification map dated December 1973."

b. *Boundaries.* The Secretary of the Interior is required to publish in the FEDERAL REGISTER, not later than 12 months after the date of designation (i.e., no later than October 12, 1977), a detailed description of the boundaries of the wild and scenic river as directed by P.L. 94-486.

The National Park Service proposes to acquire the privately owned lands within the river corridors in Morgan and Cumberland Counties as directed by Congress in Public Law 94-486. The river corridor boundaries for this proposal are generally depicted in the Boundary map, Drawing 5640/80,000. Approximately 4,520 acres will be acquired in fee, and less-than-fee interests will be acquired on fewer than 2,000 acres. The approximate amount of land to be acquired in fee for each section of river is listed below:

Stream	Segment	Miles	Fee acres
Obed River.....	0.0-23.0	24.50	1,664
Clear Creek.....	0.0-17.5	17.50	2,647
Daddys Creek.....	0.0- 2.25	2.25	47
Emory River.....	27.6-28.55	0.95	135

Public Law 90-542, the Wild and Scenic Rivers Act of 1968, states that any lands acquired for inclusion in a wild and scenic river area may be acquired through condemnation until 50 percent of the land is in the ownership of local, state, or federal government, after which the right to acquire through condemnation ceases.

Lands within the Catoosa Wildlife Management Area will continue to be owned by the Tennessee Wildlife Resources Agency.

Land will be acquired in a corridor averaging approximately 1,500 feet in width, except for areas where minimal additional lands will be acquired for facilities development, access procurement, or resource protection, and except where lands are owned by the Tennessee Wildlife Resources Agency.

2. *Administration.* The authorized river area will be managed and operated by the National Park Service according to the Wild and Scenic Rivers Act of 1968, which states that the purpose is to preserve in a free-flowing condition those rivers which possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic and cultural resource values.

Lands within the Catoosa Wildlife Management Area will continue to be managed by the Tennessee Wildlife Resources Agency. Management proposals are made by the National Park Service in the form of cooperative agreements (as required by P.L. 94-486) to work closely with the Tennessee Wildlife Resources Agency in the management and operation of the wild and scenic river. A copy of the proposed cooperative agreement may be found in Appendix C.

In accordance with the requirements of the Wild and Scenic Rivers Act, the National Park Service will classify the river corridors as wild and recreational. The plan is the same as the proposal in the final statement except for the 0.95-mile segment of the Emory which will be classified as recreational.

3. *Development.* Development proposals for Obed are depicted in the General Development Plan map, Drawing OBRI 20017. The proposals do not differ significantly from those in the final statement.

In the interest of maintaining the ecological integrity of the river area, and to further the purposes of the Wild and Scenic Rivers Act, it is proposed that development near the river be limited to already existing access points. Development also will be in compliance with Executive Order 11988, Floodplain Management, which restricts development in flood-prone areas. Minor differences in development are as follows: decrease in access points from 10 to 8; decrease in overlooks from 4 to 2; decrease in picnic areas from 4 to 3; increase in trails from 18 miles to 32.5 miles. Visitor contact facilities and camping area proposals will remain the same. It should be noted, however, that the length of river covered by development is only approximately one half of that proposed in the final statement.

Activities to be permitted do not differ from those in the final statement.

C. INTERRELATIONSHIPS WITH OTHER PROJECTS

A water quality management plan for the Clinch River basin was released by the Tennessee Department of Health subsequent to the *Final Environmental Statement* (U.S. Department of the Interior, Bureau of Outdoor Recreation, 1976a). The Obed River, Daddys Creek, Clear Creek, and the Emory River lie within the Clinch River basin. An analysis of the plan reveals that all National Park Service proposals are consistent with the overall goal of the water quality plan, which is to achieve conditions necessary to meet all the reasonable and necessary water needs of the people of the Clinch River basin and to provide the greatest possible net benefit to the region.

II. DESCRIPTION OF THE ENVIRONMENT

A. NATURAL ENVIRONMENT

In addition to the potentially endangered or threatened fauna discussed in the *Final Environmental Statement*, the habitat for the spotfin chub (*Hybopsis monacha*) has been designated critical by the U.S. Fish and Wildlife Service. All of the wild and scenic river, as well as other river portions, is within this proposed critical habitat. Threats to this species include runoff from coal mining operations, municipal and industrial wastes, and siltation.

Twenty-three mining permits in Morgan County and eight permits in Fentress County remain active. Two more permits in Cumberland County were issued in the fall of 1977, after the release of the *Final Environmental Statement*. The permits, which are for a total of 49 acres, are for land outside of the wild and scenic river boundary; however, they are above the river in the Obed watershed.

Water quality continues to be chemically and bacteriologically degraded on the Obed River from the Crossville sewage treatment plant to approximately 4 miles downstream. The city of Crossville and the state of Ten-

nessee have recognized this problem and, in the *Clinch River Basin Water Quality Management Plan*, have given the Obed River the highest priority ranking for improvement. Construction of an improved sewage treatment facility is to begin in October 1979, with operation scheduled to begin 1 year after completion.

B. CULTURAL RESOURCES

Lands of historic and archaeological significance will be managed as historic zones. Generally, little remains of cultural resources within the authorized boundaries of the river area. A Southeast Archeological Center reconnaissance team located a grist mill site north of Lilly Bridge and found numerous rock shelters. Four of the shelters revealed evidence of aboriginal habitation. None of the sites are in the vicinity of the proposed developments or will be affected by them. Descriptions will be sent to the Secretary of the Interior to determine their eligibility for nomination to the National Register of Historic Places.

III. ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION

A. IMPACTS ON TRANSPORTATION

There will be fewer adverse effects on transportation than predicted in the *Final Environmental Statement* because fewer visitors are expected to visit the area than previously estimated. Increases in the average daily traffic level with the proposal will be less than 30 percent for all roads related to the authorized river area, except on the roads at Jett Bridge and Nemo Bridge. Increased maintenance costs on these roads are estimated at less than one half of the final statement estimates or less than \$4,000 annually. This proposal will not require any upgrading of existing roads. However, improvements will be necessary after implementation of the proposals at four access points near the river.

B. IMPACTS ON POPULATION

Approximately 4,500 acres of land will be acquired in fee in Morgan and Cumberland Counties. Less-than-fee interests will be acquired on less than 2,000 acres of land. It is believed that the market value of lands near the wild and scenic river will increase. Summer and retirement housing developments can be expected to become popular along the corridor boundary. This development could have adverse effects on the river, as well as on adjacent lands, unless coordinated land use and water management plans are implemented. No families will be displaced by the proposed acquisitions. Approximately 85 to 90 families, individuals, or corporations will be affected by changes in their ownership of land because of property acquisition and severance.

C. IMPACTS ON ECONOMY

Annual visitor expenditures are projected to exceed \$600,000 per year following implementation of the acquisition and development proposals. A large portion of these funds will accrue to Morgan County businesses for goods and services such as food, lodging, and recreation supplies. However, some visitor money will be spent in surrounding counties where eating and lodging establishments and supply stores are available until such time as these facilities are more fully developed in Morgan County.

Economic impacts related to agriculture, forestry, minerals, and residential and commercial development will be essentially as outlined in the *Final Environmental Statement*.

D. IMPACTS ON RECREATION

The annual total of visitors is expected to rise from the estimated current rate of 18,000 visitors per year to 60,168 visitors per year by 1993, and to remain essentially at this level until 1998. The proportion of local visits and nonlocal visits will remain the same, as discussed in the *Final Environmental Statement*.

The Obed Wild and Scenic River will provide visitors with almost 5,000 acres of open space within 45.2 miles of river corridor, and with abundant opportunities for solitude and recreation. Administration by the National Park Service will preserve the unspoiled river corridor for future generations. Acquisition by the National Park Service will make possible recreational opportunities for current owners as well as for the public. The natural areas within the river corridor will be retained in their unspoiled state, but the area's inherent recreational, cultural, and natural potential will be developed more fully by interpretation of the outstanding natural, scenic, cultural, and recreational resources of the Obed River system.

E. IMPACTS ON WATER

Impacts related to water quality are essentially the same as those outlined in the *Final Environmental Statement*; however, the upstream portions of rivers not protected under the Obed Wild and Scenic River legislation will be subject to increased gas and oil exploration activities that could cause deterioration of water quality. Coal leasing in the watershed also could have an adverse effect on water quality. Poor water conditions would affect fishing and activities involving contact with the water.

F. IMPACTS ON VEGETATION

Adverse impacts on vegetation will occur essentially as outlined in the *Final Environmental Statement*. Except for areas proposed for development, vegetation within the park boundary will be protected unaltered. Total modification of vegetation with implementation of the proposals will affect 25 to 35 acres, or less than 1 percent of the total fee area. Table I shows the acres of vegetation to be modified by development.

TABLE I.—Acres of Vegetation Modified

Type of development	Acres of vegetation affected by construction
Picnic Areas (3).....	2-4
Access Improvement.....	4-5
Camping Areas (3).....	3-4
Hiking Trail Development (32.5 miles)....	10-12
Overlooks (2).....	2-4
Visitor Contact Facilities (2) (to be constructed outside boundary).....	4-6
Total.....	25-35

The land acquisition proposals discussed in this addendum will contain 2,200 acres, or 0.4 percent of the commercial timber available in Morgan County. Approximately three fourths of the stumpage is believed to be of

sawtimber quality, while the remainder is pole timber and saplings. The annual growth value of this timber is estimated at \$6,550.

Productive agricultural land that will be forgone under the land acquisition proposal is estimated at 80 to 100 acres. This represents less than 0.2 percent of the agricultural land in Morgan County. The estimated annual value of production on this agricultural land is nearly \$3,200. It is possible that agricultural uses could continue on a permit basis in areas other than the approximately 55 acres where development is proposed. The Potential for additional agricultural lands to be cleared is forgone.

Preservation of the 45.2 miles of the Obed River system will preclude second home and retirement home development, timber harvesting, and agricultural clearing, thereby reducing the attendant soil erosion, siltation, and nutrient loading of the water on lands where interests are to be acquired. Soil erosion resulting from the planned developments indicated in table 1 will be temporary.

It should be noted that the most significant soil erosion that now occurs results from the uncontrolled parking and visitor activity that takes place at all the existing access points to the rivers. These activities will be regulated after the completion of controlled parking areas, trails, and boat put-in sites.

G. IMPACTS ON FISH AND WILDLIFE

Fish populations are likely to be affected by the degradation of streams resulting from gas and oil activities and coal leasing. (Also see impacts as outlined in the *Final Environmental Statement*.)

H. IMPACTS ON CULTURAL RESOURCES

Acquisition of properties within the boundary by the National Park Service will afford protection to cultural resources under Executive Order 11593 and Section 106 of the Historic Preservation Act. Increased visitation to the Obed River corridor could result in vandalism and damage. The planned minimal facilities development will not affect known cultural resources.

I. IMPACTS ON ENDANGERED SPECIES

There will be no impact on the critical habitat for the spotfin chub within the proposed boundary.

J. IMPACTS OF LITTERING, VANDALISM, AND POACHING

The overall anticipated effects from littering, vandalism, and poaching will be slight. National Park Service law enforcement personnel will mitigate the potential problems associated with increased visitor use and, when feasible, visitors will be informed of the statutes and regulations of the wild and scenic river.

K. IMPACTS OF PARK MANAGEMENT

The cost of maintenance and operations will increase with the increase in visitation to the area. Because of the remote and wild nature of the river corridor, park personnel will be committed to occasional search and rescue operations. Time and funds will be required for this activity that could otherwise be directed to other park operations.

IV. MITIGATING MEASURES INCLUDED IN THE PROPOSED ACTION

All land acquisition will be in compliance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (P.L. 91-646) and applicable U.S. Department of the Interior guidelines, to assure that residents on acquired lands are given maximum relocation assistance.

Payments to Morgan and Cumberland Counties for the loss of real property taxes due to the acquisition of land by the federal government will be made in accordance with the provisions of P.L. 94-505.

Site-specific archaeological surveys and testing will be conducted before any ground-disturbing activities. Information on any remains discovered will be sent to the Advisory Council on Historic Preservation and evaluated against National Register of Historic Places criteria. If eligible, they will be nominated to the register. A long-term program will be initiated for patrol of known archaeological sites in accordance with the Antiquities Act of 1906.

Law enforcement activities will be conducted to alleviate the problems of vandalism and littering. Cooperative arrangements will be made with local law enforcement agencies to control vandalism and associated problems.

Cooperation between the Tennessee Valley Authority, the Tennessee Department of Conservation, the Tennessee Wildlife Resources Agency and the National Park Service can help to forestall some of the threats of gas and oil exploration and coal leasing activities occurring in the watershed. Programs promoted through this cooperation can reduce the pollution of the upstream portions of the rivers, thereby protecting the quality of water used for fishing and water contact activities in the wild and scenic river corridor.

V. ADVERSE EFFECTS THAT CANNOT BE AVOIDED SHOULD THE PROPOSAL BE IMPLEMENTED

Approximately 35 acres of vegetation will be destroyed or modified by construction activities.

Some vandalism and littering will be unavoidable.

Some loss of total revenues for Morgan County may result.

VI. THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

The only short-term uses discussed in this addendum are the development of facilities and access. These short-term uses of the environment will result in visitor use being channeled into small areas. Thus, long-term preservation of the land in an undisturbed state will be encouraged.

VII. IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

Land acquisitions discussed in this addendum involve commitments to certain land uses and preclude formerly possible uses and associated economic benefit. The commitments to use as a wild and scenic river tend to be irreversible, though they can be reversed by congressional action. Uses of the land and river precluded by its addition to the Wild and Scenic Rivers System tend to be irretrievably precluded.

VIII. ALTERNATIVES TO THE PROPOSED ACTION

For some areas of private land, alternative boundary locations were considered. However, because of the legislative constraints, no significantly different alternatives were considered in development of the proposal. These constraints may be found in P.L. 94-486 (Appendix A) and P.L. 90-542 (Appendix B).

CATOOSA WILDLIFE MANAGEMENT AREA AGREEMENT

COOPERATIVE AGREEMENT BETWEEN TENNESSEE WILDLIFE RESOURCES AGENCY AND NATIONAL PARK SERVICE IN RELATION TO THE MANAGEMENT OF THE OBED WILD AND SCENIC RIVER

FEBRUARY 28, 1978.

This Cooperative Agreement, made pursuant to the Act of Congress approved October 12, 1976 (90 Stat. 2327) between the Tennessee Wildlife Resources Agency, acting by and through the Executive Director (hereinafter called the "Agency"), and the Secretary of the Interior, by and through the Regional Director, National Park Service, Southeast Region (hereinafter called the "Service"), is for the purpose of establishing concepts and procedures for the development and management of those lands within the wild and scenic river corridor that are part of the Catoosa Wildlife Management Area (hereinafter called the "Area").

Article I, General:

The Authorization Act charged the Secretary of the Interior with the ultimate responsibility for the management of the Wild and Scenic River, but it also states that the lands within the river boundaries that are currently part of the Catoosa Wildlife Management Area shall continue to be owned and managed by the Tennessee Wildlife Resources Agency. It is therefore deemed necessary, appropriate, and in the public interest for the Agency and the Service to cooperate in planning for the management of the above-described lands in accordance with the stated purpose of the Wild and Scenic River—that purpose being to preserve and protect the Obed Wild and Scenic River as a free-flowing river which possesses outstanding scenic, recreational, geologic, and fish and wildlife values, for the protection of the wildlife resources and the primitive character of the area, for the protection of the water quality of the river, for the benefit and enjoyment of future generations, and for other vital national conservation purposes.

Article II, The Tennessee Wildlife Resources Agency agrees that:

A. The lands described below shall, to the extent they are under the jurisdiction of the Agency, be specifically defined, and will be managed and administered in accordance with the purposes and policies outlined in the Wild and Scenic Rivers Act, as amended, Public Law 90-542:

1. Those lands enclosed within the rims of the gorge of the Wild and Scenic River, or, if there is no readily definable gorge rim, those lands which are visible from the thread of the river.

2. A strip of land extending back from the gorge of the river for a distance of 100 feet in areas where the gorge rim is readily visible from the thread of the river.

3. Those lands lying in the gorges of streams that are tributary to the Obed River, Daddys Creek, and Clear Creek, which are visible from the thread of the river.

B. It will keep the Service informed of its policies, procedures, and management needs as they relate to planning, development, and administration of the river corridor within the area under the jurisdiction of the Agency.

C. It will provide professional advice and assistance to the Service to the extent that funds and personnel availability allow.

D. It will construct and maintain improvements that the Agency and Service mutually agree should be provided on river corridor lands under the jurisdiction of the Agency.

E. It will consult with the Service before implementing any program which could have an impact on the management and use of the river.

F. No timber cutting will be conducted within the gorge of the Wild and Scenic River except for limited operational cuts necessary for safety, approved development projects, or insect and/or disease control. Such activities will be conducted only after consultation with the Service.

G. It will permit access through the Area to the river over existing roads except

1. during periods of freezing and thawing weather when such use would seriously damage the road surfaces, or

2. when it is necessary to close a road because a managed hunt is in progress, or

3. when the use of a road would have a detrimental effect on fish and/or wildlife population, or

4. when public use would interfere with approved wildlife project objectives.

H. It will be responsible for the development and implementation of Safety and Search and Rescue Plans for those portions of the river that are under its jurisdiction.

I. It will accumulate use and impact data, for the river corridor under its jurisdiction, in order to determine the amounts and types of use and the need to control such use for the preservation of water quality and the plant and animal resources.

Article III, The National Park Service agrees that:

A. It will prepare plans and specifications for the development of the Obed Wild and Scenic River that are in keeping with the concepts expressed in the Authorization Act, after consultation with the Agency. The plans will include those river corridor lands that are under the jurisdiction of the Agency.

B. It will keep the Agency fully informed of all plans and programs.

C. It will consult with the Agency prior to initiating any plan, program, or regulation that may affect fish and wildlife populations or public use thereof within the lands administered by the Service.

D. It will cooperate with the Agency in the joint enforcement of applicable game and fish laws on lands administered by the Service.

Article IV, The Tennessee Wildlife Resources Agency and the National Park Service agree that:

A. They will meet annually, or more often if necessary, to review the cooperative

agreement, administrative and management policies, practices, procedures, regulations, and plans affecting the river lands under their respective jurisdictions.

B. They will cooperate in the preservation of life and property and in the suppression of wildfire to the extent permitted by the availability of staff and funds.

C. They will, as funds permit, obtain the necessary radio equipment and clearances so that field personnel will be able to work together for the resolution of mutual law enforcement problems and of emergency situations.

D. Notification shall be promptly given if a fire is located on, or determined to be a threat to, lands under the jurisdiction of either party to the agreement.

E. Recreation use levels will be regulated on the basis of the carrying capacity of the land and water to prevent damage to the resources or deterioration of the recreation experience. Tentative saturation levels have been determined for the river and they will be modified as use data indicates.

G. They will encourage the joint publication of new releases which relate to the use and management of the river.

F. They will cooperate in the development and implementation of an interpretive/public information program which will convey information about the river and about the risks associated with the utilization of its resources.

H. Nothing in this Agreement shall be construed as obligating either party hereto to the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.

I. Nothing contained herein shall be construed as limiting in any way the responsibility and authority as defined by TCA Chapter 51, Rules and Regulations, Proclamations and Policies promulgated by the Tennessee Commission, or by Federal law of the Secretary, U.S. Department of the Interior, in connection with the administration and protection of lands and resources under their respective jurisdictions.

Article V, Effective Date:

This Cooperative Agreement shall become effective when signed by the parties hereto and shall continue in force until terminated by mutual agreement or by either party upon sixty days' notice in writing to the other of the intention to do so. Amendments to the agreement may be proposed by either party and shall become effective upon written approval by both parties.

In witness whereof, we have hereto subscribed our names for and on behalf of our respective agencies.

Dated: March 2, 1978.

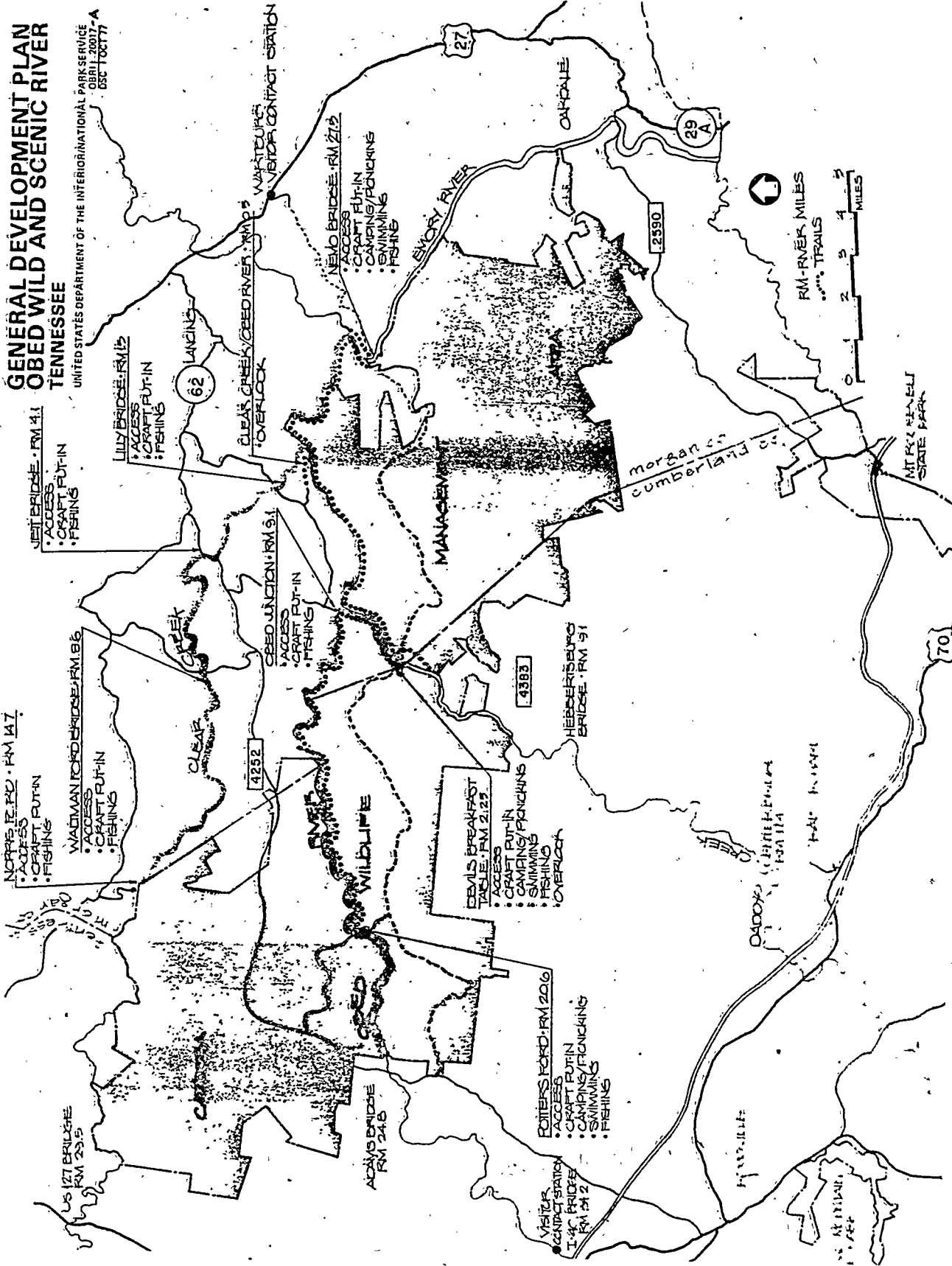
TENNESSEE WILDLIFE
RESOURCES AGENCY,
GARY J. MYERS,
MARCH 2, 1978
Executive Director.

Dated: March 17, 1978.

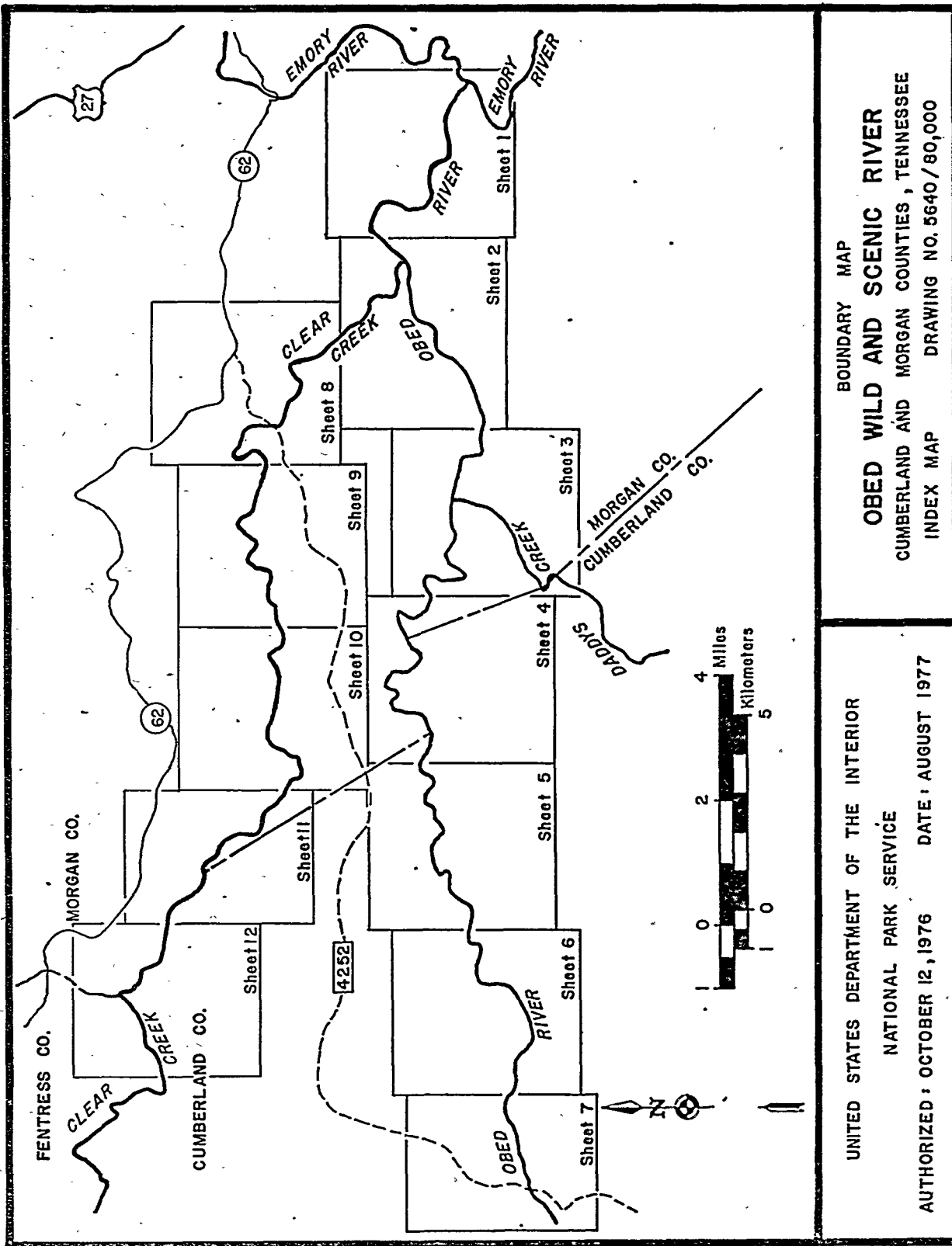
NATIONAL PARK SERVICE,
JOE BROWN,
REGIONAL DIRECTOR,
Southeast Region.

GENERAL DEVELOPMENT PLAN OBED WILD AND SCENIC RIVER TENNESSEE

UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE
OBR 11-20017-A
DSC 10CT77



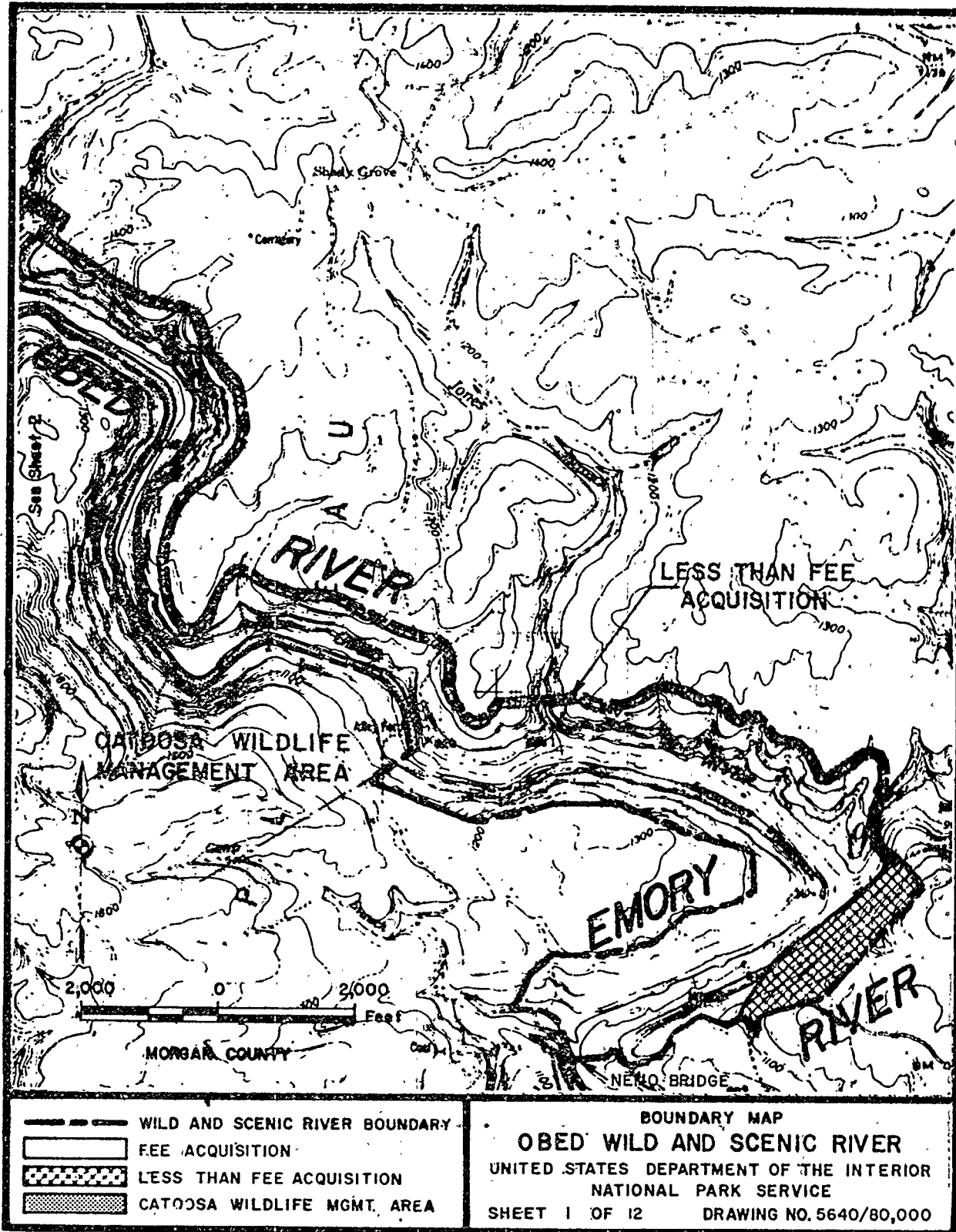
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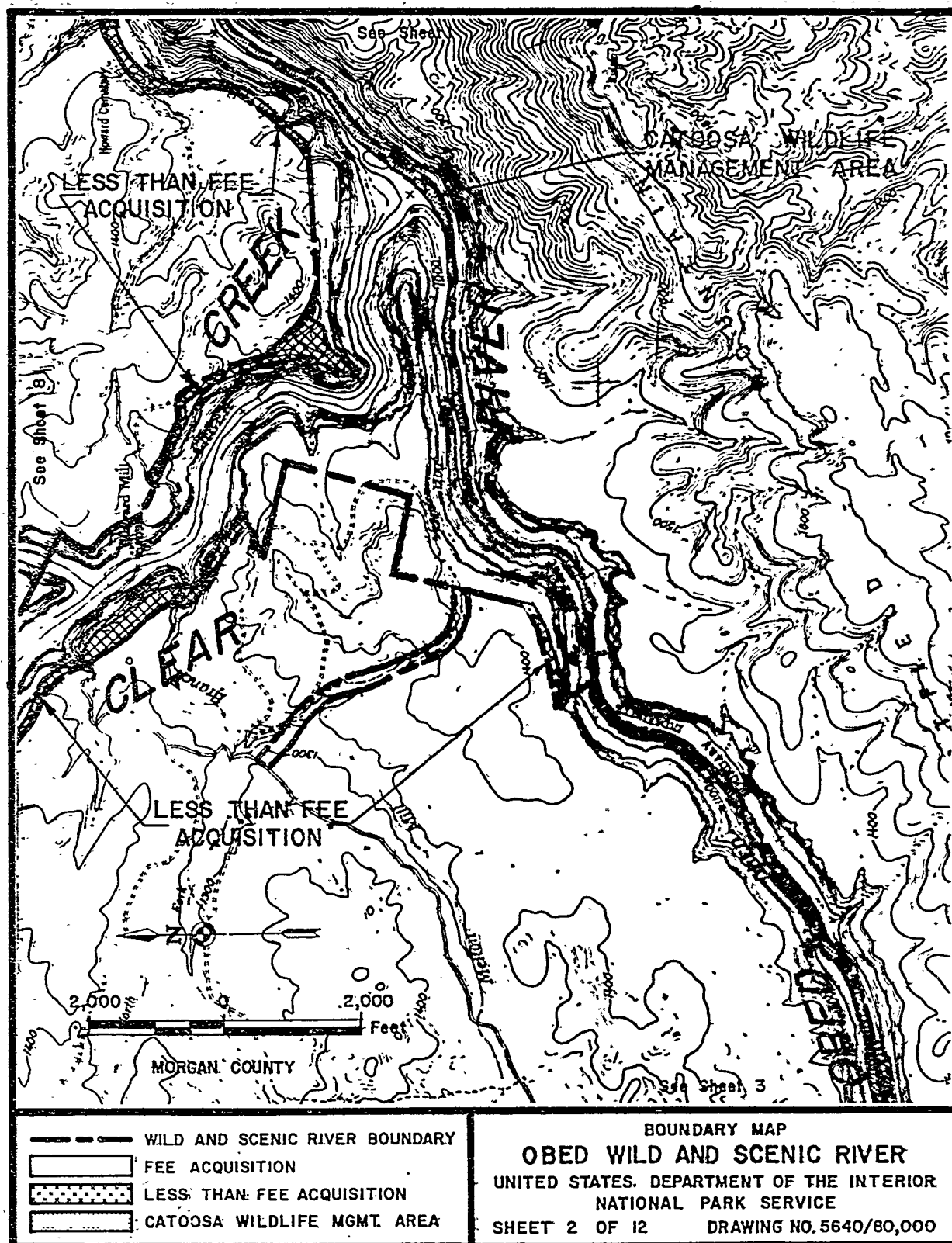


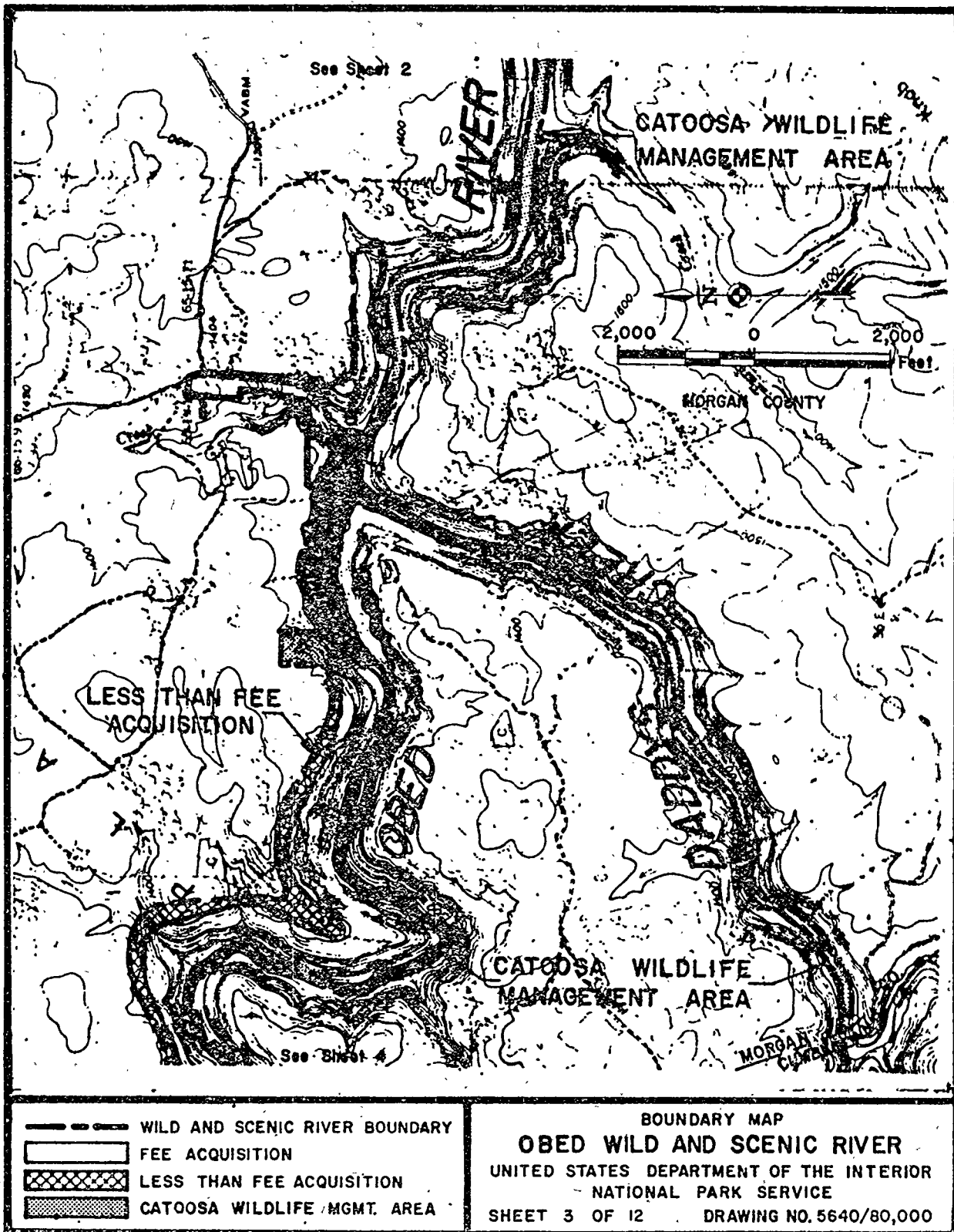
BOUNDARY MAP
OBED WILD AND SCENIC RIVER
 CUMBERLAND AND MORGAN COUNTIES, TENNESSEE
 INDEX MAP DRAWING NO. 5640/80,000

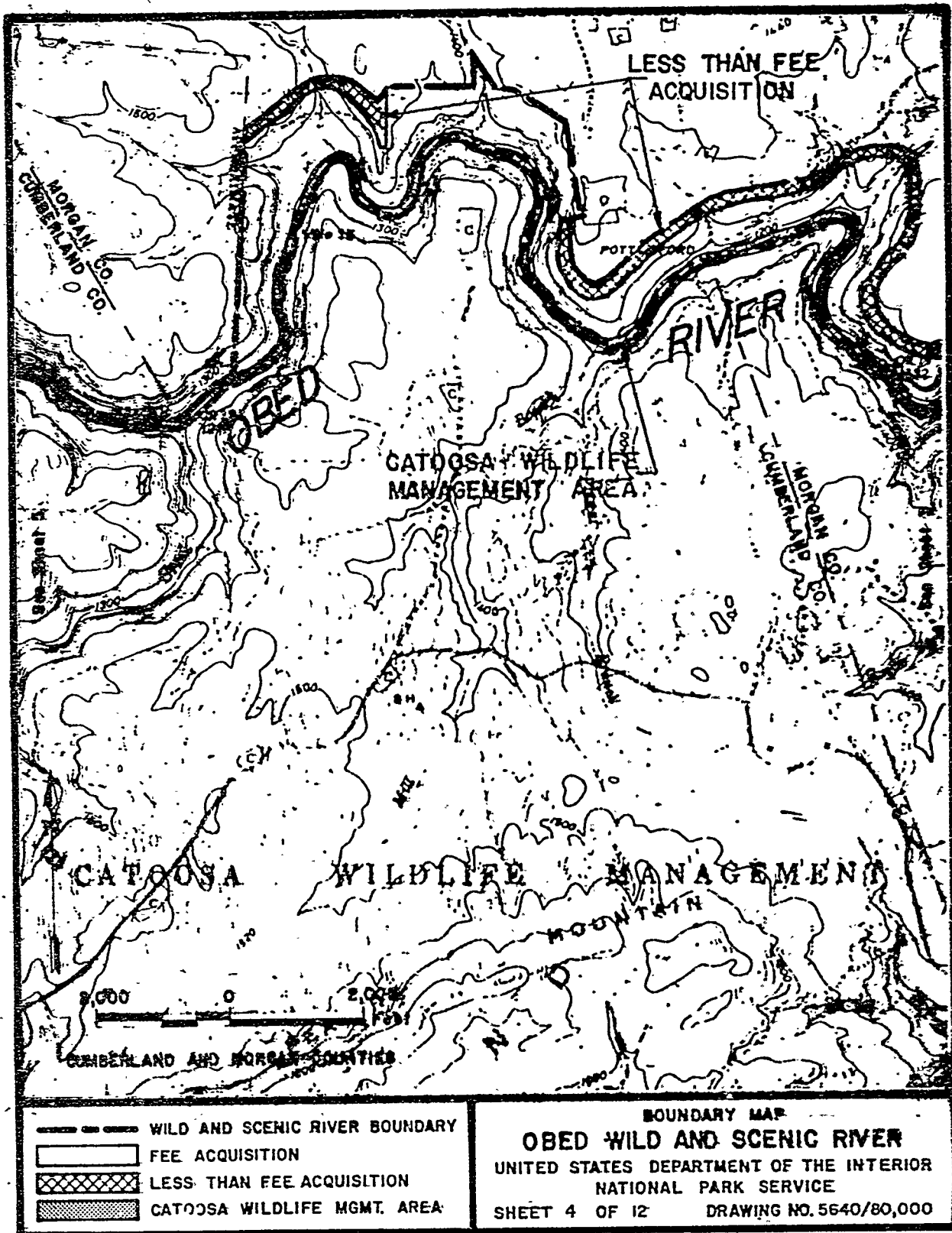
UNITED STATES DEPARTMENT OF THE INTERIOR
 NATIONAL PARK SERVICE

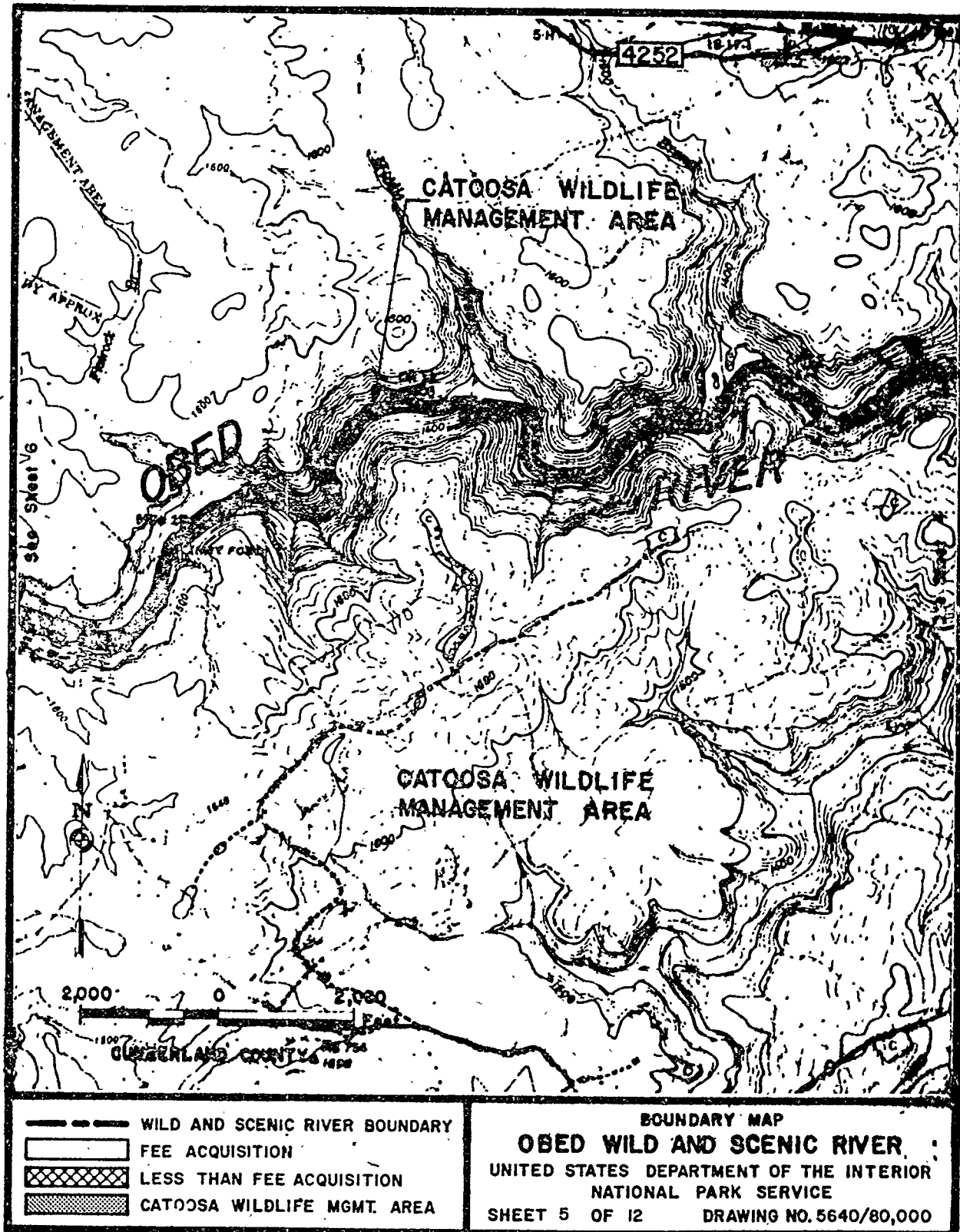
AUTHORIZED: OCTOBER 12, 1976 DATE: AUGUST 1977

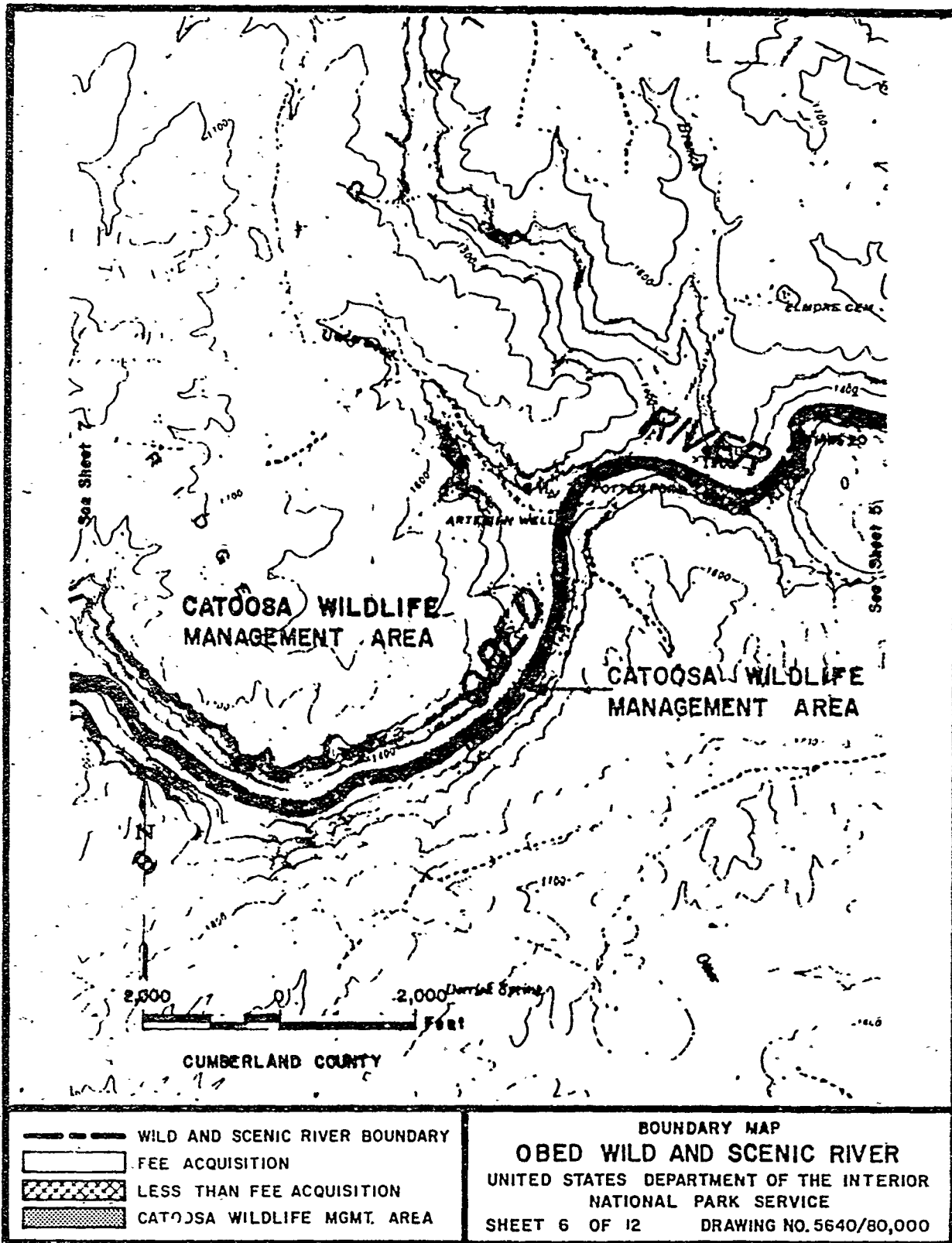


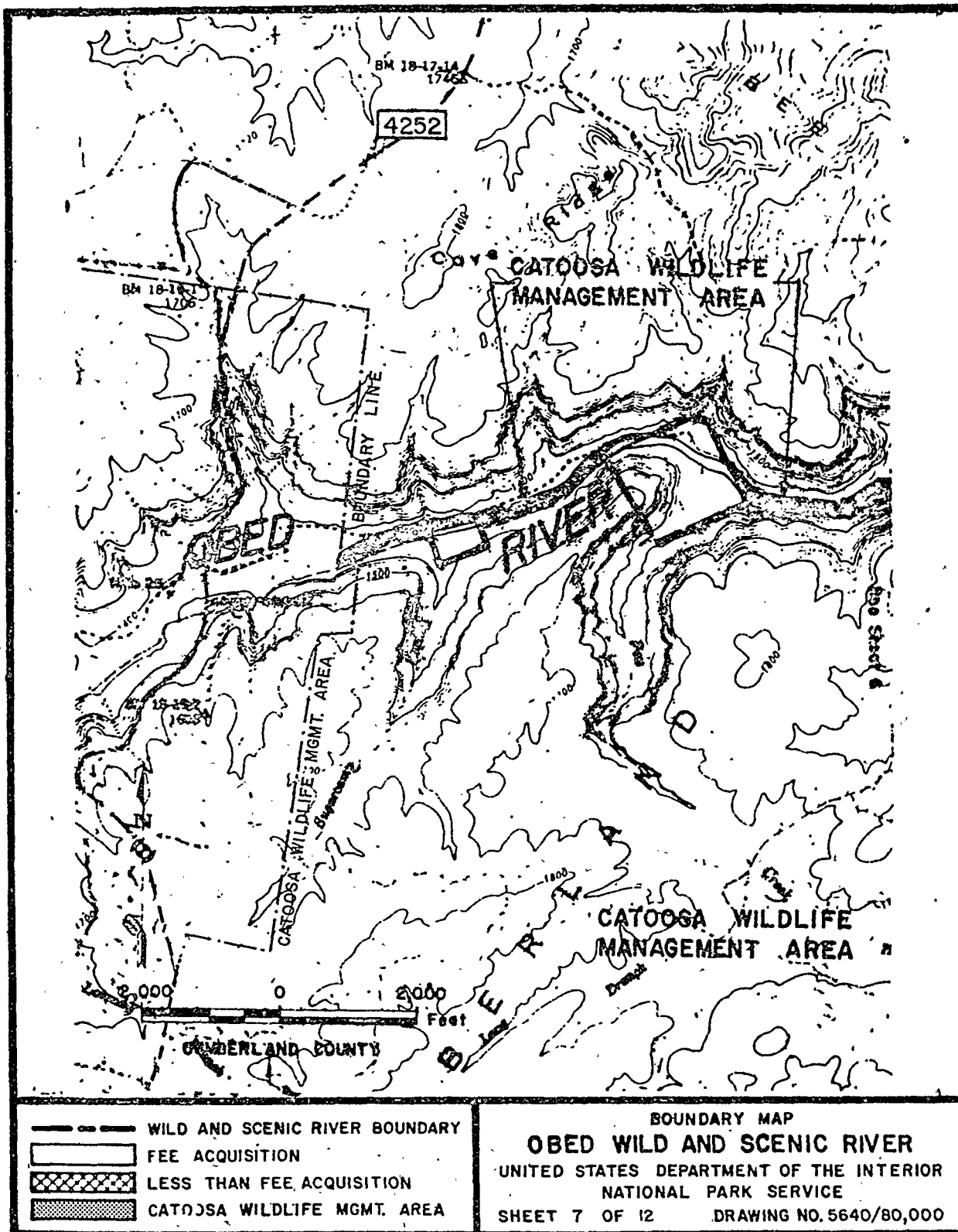


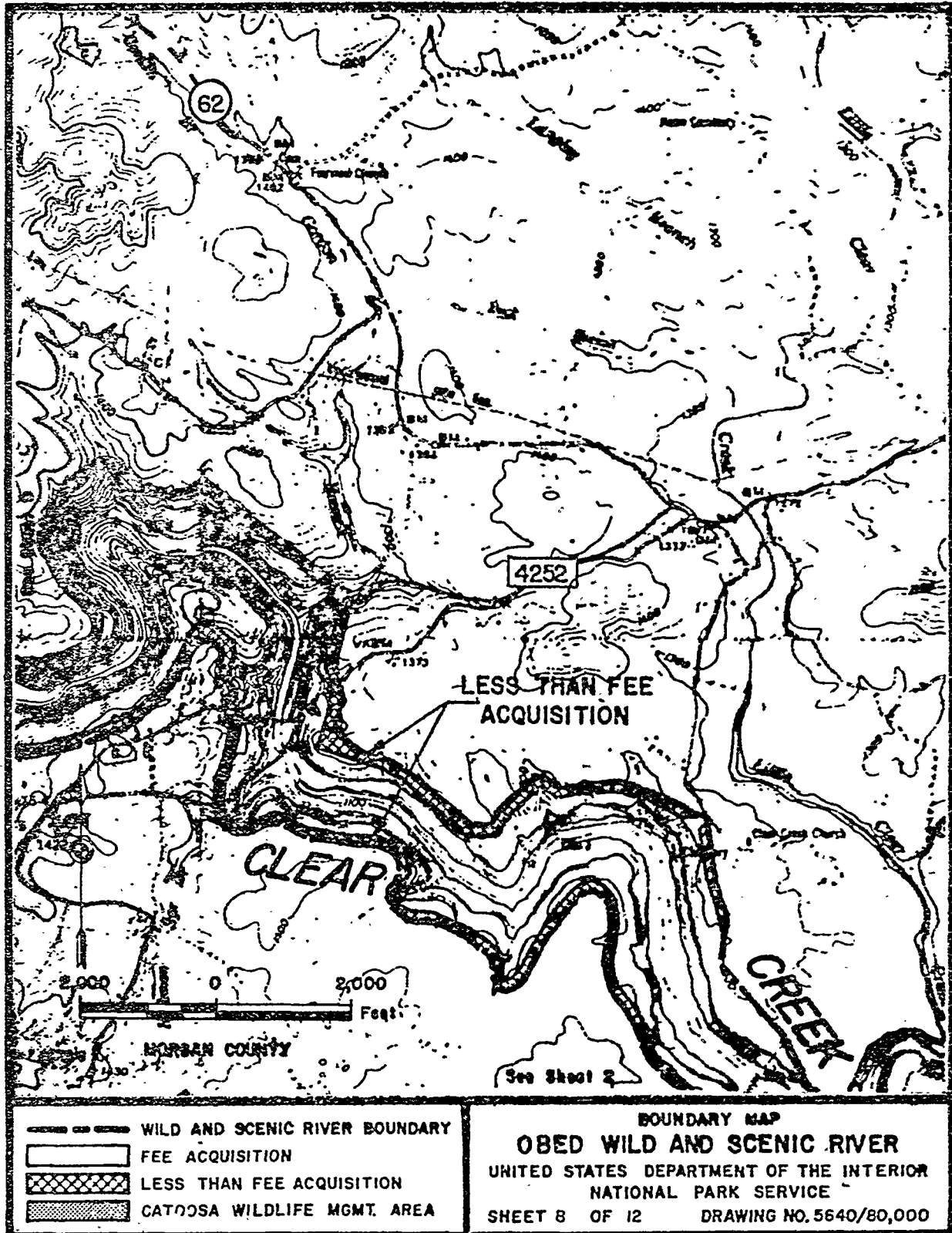


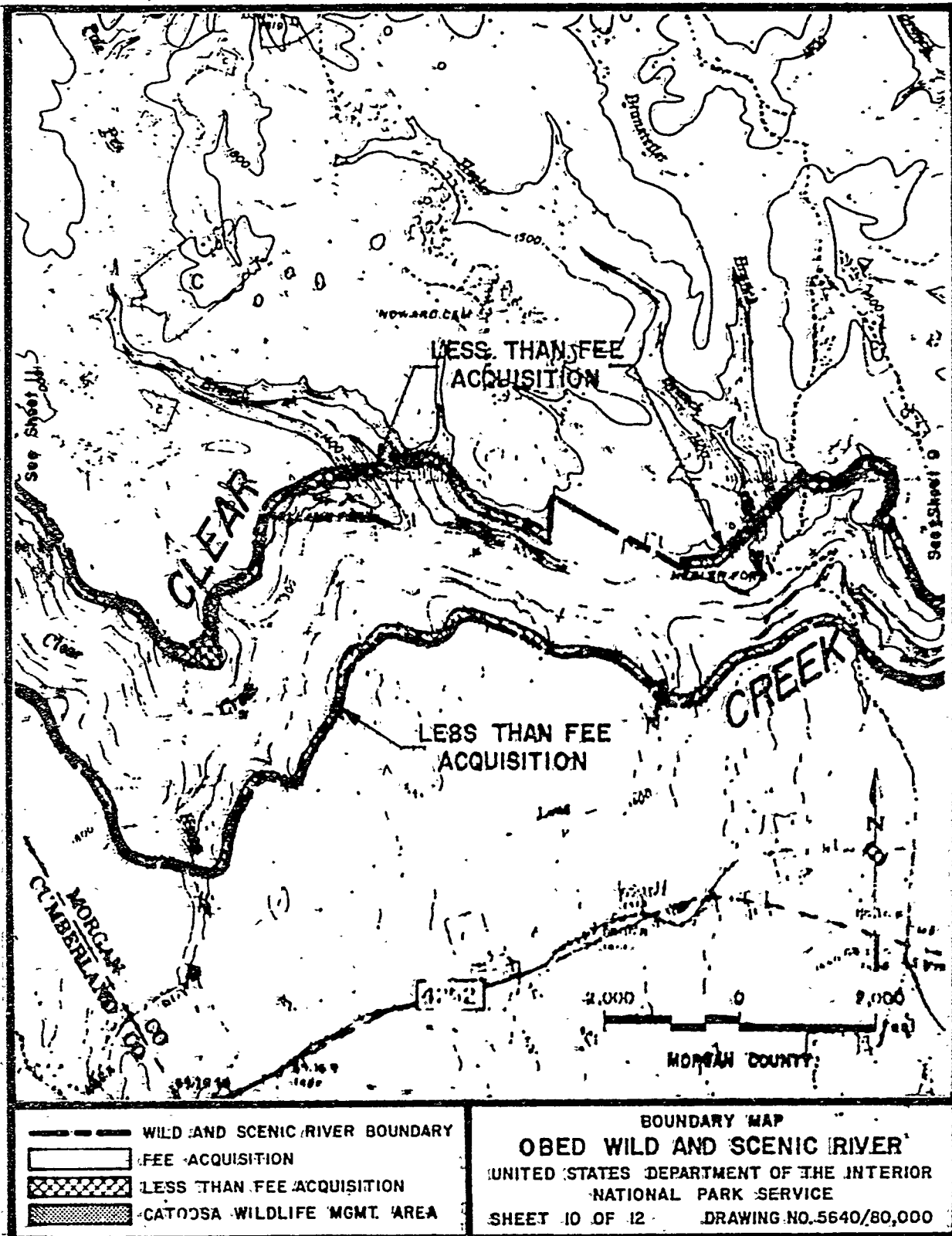


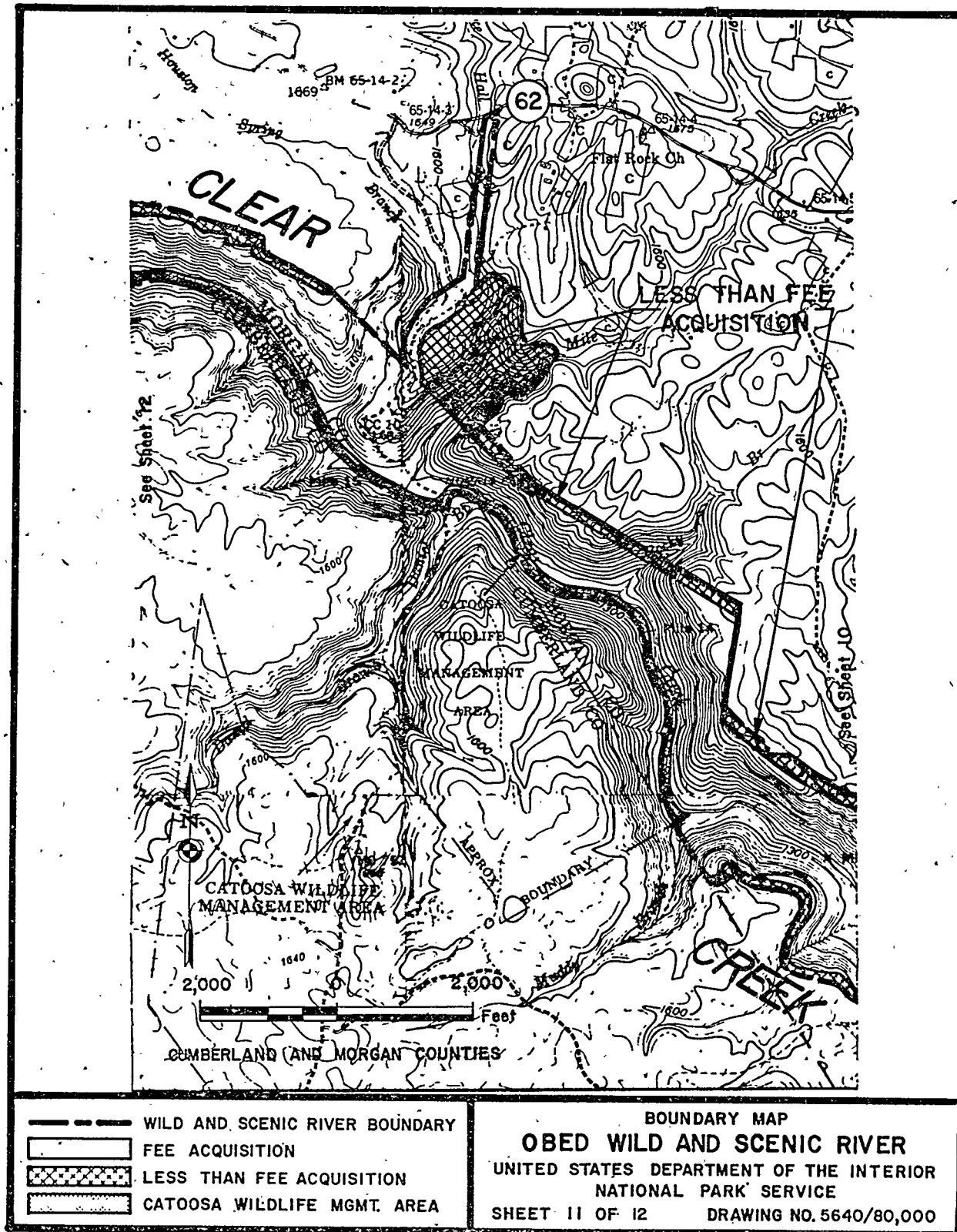


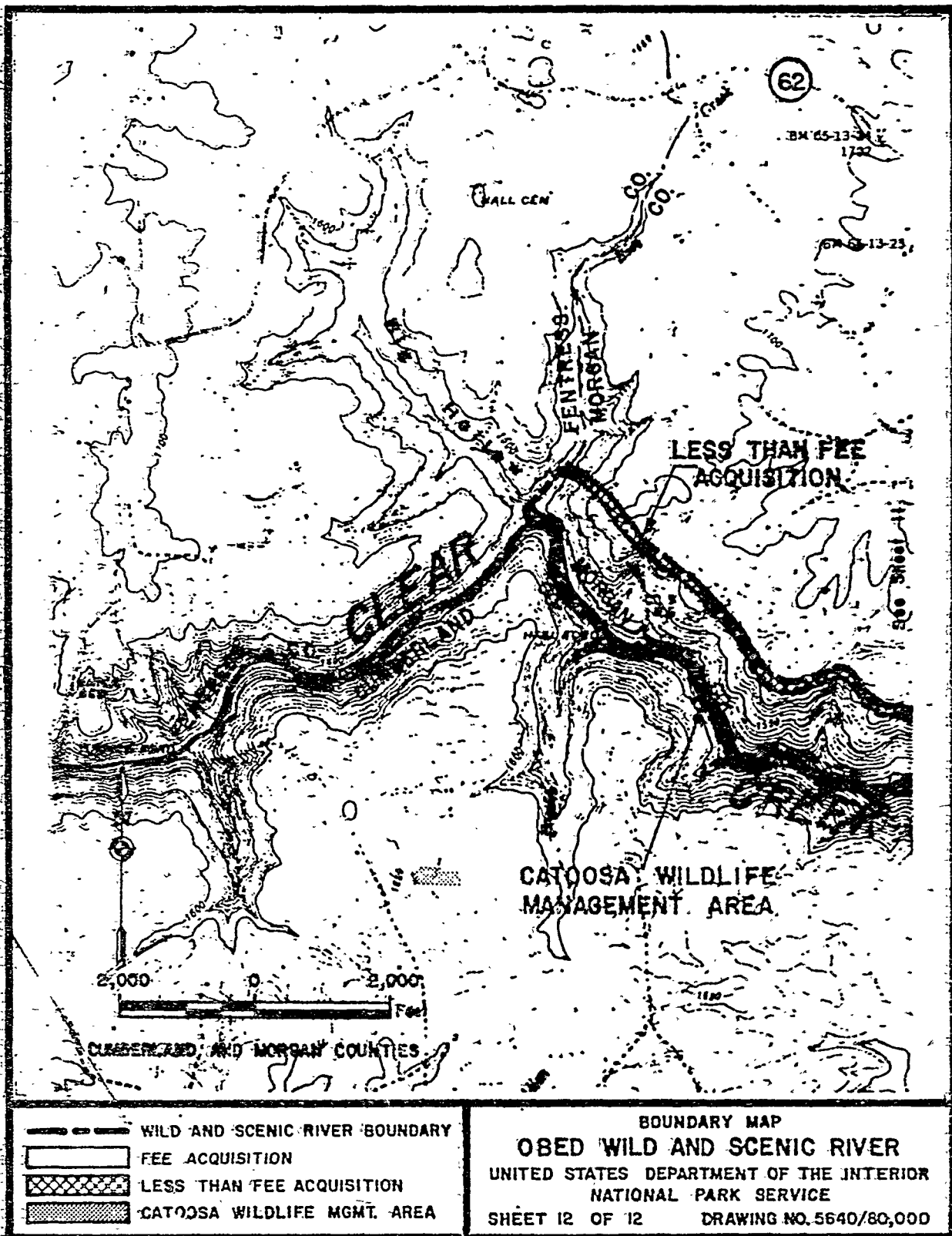












[FR Doc. 79-3933 Filed 2-6-79; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-189]

CERTAIN STEEL WIRE NAILS FROM CANADA

Determination of No Injury or Likelihood Thereof

On November 1, 1978, the United States International Trade Commission received advice from the Department of the Treasury that certain steel wire nails from Canada, except those produced by Tree Island Steel Co., Ltd., and Steel Co. of Canada, Ltd., are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on November 15, 1978, the Commission instituted investigation No. AA1921-189 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For the purpose of Treasury's determination, the term "certain steel wire nails" means steel wire brads, nails, spikes, staples, and tacks of one-piece construction which are 1 inch or more in length and 0.065 inch or more in diameter, as provided for in item 646.26 of the Tariff Schedules of the United States (TSUS).

Notice of the institution of the investigation and of the public hearing held in connection therewith was published in the FEDERAL REGISTER of November 21, 1978 (43 F.R. 54304). The public hearing was held in Washington, D.C., on December 14, 1978, and all persons requesting the opportunity to appear were permitted to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested persons and information adduced at the hearing and obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

DETERMINATION

On the basis of information developed in investigation No. AA1921-189, the Commission unanimously determined (Chairman Parker not participating) that an industry in the United States is not being and is not likely to be injured, and is not prevented from being established, by reason of the importation of certain steel wire nails from Canada that are being, or are likely to be, sold at less than fair value

within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR THE NEGATIVE DETERMINATION OF COMMISSIONERS BILL ALBERGER, GEORGE M. MOORE, AND CATHERINE BEDELL

In order for the Commission to find in the affirmative in an investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established,¹ and the injury or likelihood thereof must be by reason of imports at less than fair value (LTFV).

DETERMINATION

On the basis of the information obtained in this investigation, we determine that an industry in the United States is not being and is not likely to be injured by reason of the importation of certain steel wire nails from Canada which the Secretary of the Treasury has determined are being, or are likely to be, sold at LTFV.

THE IMPORTED ARTICLE AND THE DOMESTIC INDUSTRY

The steel wire nails subject to this investigation are those of one-piece construction, 1 inch or more in length, and 0.065 inch or more in diameter. Also included are brads, spikes, staples, and tacks meeting these descriptive requirements. About 50 U.S. firms make steel wire nails in plants located primarily in the North Central and Northeastern States. There are two general types of firms involved—large integrated companies that make steel rod, draw it into wire, and then make nails from the wire, and smaller non-integrated firms (also called converters or fabricators) that make nails from purchase steel rod or wire.

LTFV SALES

The Treasury Department investigation on certain steel wire nails from Canada covered sales made during the period July 1, 1977 through December 1, 1977. The investigation was limited to four manufacturers which together accounted for more than 78 percent of all Canadian-made steel wire nails sold for export to the United States. They are Sivaco Wire & Nail Co. (Sivaco), the Steel Company of Canada, Ltd. (Stelco), Titan Steel and Wire Co., Ltd. (Titan), and Tree Island Steel Co., Ltd. (Tree Island). Treasury considered the LTFV margins found for Stelco and Tree Island (1.5 percent and 0.9 percent, respectively) to be minimal in relation to the total volume of exports and therefore excluded

¹Prevention of establishment of an industry is not an issue in this investigation and will not be discussed further.

those companies from its determination. Weighted average margins found for Sivaco and Titan were 5.3 percent and 2.5 percent, respectively. Of these two companies, Sivaco is by far the larger, with U.S. sales of \$9.5 million during the period of Treasury's investigation compared with sales of about \$140,000 by Titan.

THE QUESTION OF INJURY OR LIKELIHOOD THEREOF BY REASON OF LTFV SALES

U.S. consumption—The U.S. steel wire nail market is highly sensitive to fluctuations in the overall domestic economy and thus, apparent consumption of nails dropped sharply in the recession year, 1975. Since then, consumption has risen rapidly to 741,000 short tons in 1977 (an annual growth rate of about 23 percent), and in July-September 1978, apparent consumption was about 6 percent more than that for January-September 1977. According to industry representatives, substitute products such as structural glue are not expected to displace nails in the market in the near future and technological development such as automatic nailing guns (which greatly increase carpenter productivity) will further strengthen demand for nails.

U.S. production and utilization of productive facilities—Production of steel wire nails increased each year during 1975-77 and rose in January-September 1978 compared with January-September 1977. In addition, capacity utilization (based on 5-day-a-week operating level) also increased each year from 72 percent in 1975 to 76 percent in 1977, and rose further to 78 percent in January-September 1978. Several new firms started production during 1975-78, and many existing firms expanded their operations. Sales of nail-producing machinery are also increasing.

Inventories—U.S. producers maintained a relatively constant 1 to 2 month supply of inventory throughout the periods examined, although inventories were typically higher at the end of December when the construction market is slow than at the end of September when that market is still strong. The decline in the ratio of end-of-period inventories to shipments from 13.7 percent in 1976 to 12.5 percent in 1977 is evidence that large amounts of inventory are not accumulating.

Profitability—While there is evidence of a decrease in gross profit margins during 1975-77, the total gross profits of the integrated and nonintegrated producers surveyed rose. The current and prospective return on investment has been adequate for Sivaco to build new production facilities in the Northeast and Virginia, where complainants argue that the impact of LTFV sales was

greatest. During the same period, there is evidence of a substantial increase in the number of nail-producing machines purchased.

Employment—The number of production and related workers employed in the nail operations of the firms surveyed rose from 1,330 in 1975 to 1,600 in 1977, and stood at 1,610 in January–September 1978. Output per man-hour worked declined during 1975–77 because of certain startup inefficiencies experienced by the new firms, but productivity rose from 160 pounds per man-hour in 1977, to 166 pounds per man-hour in January–September 1978, as the operations of these firms normalized.

Imports and market share—Imports from companies subject to the LTFV determination accounted for less than 15 percent of total imports in 1977, and less than 10 percent of apparent U.S. consumption. From 1975–77, such imports increased their market share by less than 1 percentage point and lost share in January–September 1978 compared with the corresponding period in 1977. Other imports increased their share of the market more rapidly during 1975–78 than did Canadian companies subject to the LTFV finding.

Lost sales—Domestic producers submitted numerous allegations of sales lost to LTFV imports. Of the 25 purchasers contacted by the Commission, only one indicated that price had been the primary reason for shifting its source of supply to a Canadian firm subject to Treasury's LTFV sales determination. The remaining purchasers selected suppliers based on other factors, such as service or availability of a more complete product line. The changes in market share mentioned above do not indicate that any substantial sales have been lost to Canadian producers subject to the LTFV determination.

Prices—After declining in 1975, prices for nails have generally risen, particularly during the first 3 quarters of 1978. The strong demand for nails plus the establishment of trigger prices in 1978,¹ virtually insure that prices will stabilize or continue to increase, thus generating increasing profits for the U.S. industry. In addition, assurances have been given by Stelco and Tree Island that they will not sell nails in the United States at LTFV in the future, and such assurances have been offered by Sivaco. During 1976, 1977 and January–September 1978, Sivaco generally undersold U.S. producers by 10 to 15 percent, while their LTFV margin was 5.3 percent. We also found no evidence of either price suppression or price depression by reason of LTFV sales.

¹ Trigger prices were increased on October 1, 1978, and again on January 1, 1979.

Summary—With consumption increasing, U.S. production and capacity utilization increasing since the recession of 1975, employment increasing, inventories steady and turning slightly downward, and profits only slightly down, there is little indication of injury to the domestic industry. Whatever injury may be occurring, however, is not by reason of LTFV sales from Canada. Other imports are increasing more rapidly than LTFV imports from Canada. Lost sales evidence does not support a causal connection, and price information further supports the assertion that any injury is not by reason of LTFV sales. In view of the increasing trends noted above with respect to U.S. producers' production, capacity utilization, and employment, the stable or decreasing trend of imports from companies subject to the LTFV determination, generally increasing domestic and imported prices for nails, and the fact that price assurances have been given by two Canadian producers and offered by Sivaco, we also find no indication of a likelihood of injury to the U.S. industry.

CONCLUSION

It is clear from the above considerations that the U.S. industry producing steel wire nails in the United States is not being and is not likely to be injured by reason of the importation of such nails from Canada found by Treasury to be, or likely to be, sold in the United States at LTFV. Therefore, we find in the negative.

STATEMENT OF REASONS FOR THE NEGATIVE DETERMINATION OF COMMISSIONER PAULA STERN

Having considered all of the information before me in this investigation, I have determined, pursuant to Section 201 of the Antidumping Act of 1921, as amended, that an industry in the United States is not being or likely to be injured, or prevented from being established, by reason of the importation into the United States from Canada of certain steel wire nails at less than fair value.

THE DOMESTIC INDUSTRY

The subject of this investigation is steel wire nails, consisting of steel wire brads, nails, spikes, staples and tacks of one piece construction, one inch or more in length and 0.065 inch or more in diameter, as provided for in TSUS item 646.26.

These items are produced domestically by over fifty companies, but the seven petitioners all come from the small group of eight integrated steel producing firms which account for three-fourths of domestic nail shipments. The integrated firms manufacture steel wire rod, draw the wire rod into wire, and then produce nails from

the wire. They generally derive greater profits from products other than nails and they concentrate their nail production on lower-priced high-volume items. Most use nail producing machines that were installed nearly fifty years ago, and the Commission heard testimony that some of these firms consider nail production a means of consuming excess or rejected material from their other steel operations.

Numerous smaller nonintegrated firms purchase either steel wire rod or drawn wire to make the remaining one-fourth of domestic nail shipments. These firms concentrate on producing higher-priced specialty nails. Included among these firms are the only U.S. producers of collated nails (nails driven by means of nail guns at rates of up to 150 per minute), a new and fast growing segment of the nail industry, which according to testimony has tripled in volume in the last five years and presently accounts for fifteen percent of the domestic nail market. The nonintegrated firms generally consider nail making more essential to their operations and have made substantial investments in new equipment to enhance production capability. Included in this latter group of smaller firms are New York Wire Mills, Inc. and Virginia Wire and Fabric Company, both owned by Ivaco Industries, Ltd., which also owns Sivaco Wire and Nail Co., the largest Canadian exporter of nails found to be exporting to the United States at less than fair value.

IMPORTS

Imports from all sources have steadily risen as a share of total U.S. consumption, from approximately 42% in 1975, to just under 50% in 1976, and over 53% in 1977. Data on consumption for 1975–1977 is from the Department of Commerce. The only available consumption data for the first nine months of 1978 is from the American Iron and Steel Institute, and is not comparable to Commerce data. For each full year during the period of investigation, 1975–1977, exports from four countries—Japan, Korea, Canada and Poland—have accounted for at least 85% of total U.S. imports. In the first three quarters of 1978, 80% of total imports came from these four countries.

Imports from Canada declined from a peak of 24% of total imports in 1975 (Canada's largest share of total imports for any year from 1968 to present) to 18% in 1976 and 19% in 1977, and were 17% of total imports in the first three quarters of 1978. The Department of Treasury determined that during the period of its investigation, July 1–December 31, 1977, two Canadian firms, Sivaco Wire and Nail Co. (Sivaco) and Titan Steel and Wire Co.

(Titan) had exported nails to the United States at less than fair value margins of 5.3% and 2.5%, respectively. Sivaco's exports to the United States during the period of Treasury's investigation totalled \$9.5 million, while Titan's totalled only \$140,000. Exports by the other Canadian nail producers either were not investigated by Treasury or were found to have been at *de minimus* less than fair value margins. Based upon information received by the Commission from Canadian producers for the period since 1975, the ratio of exports to the United States by Canadian producers included in Treasury's determination to those excluded have risen only slightly since 1975. As a share of total U.S. imports, Canadian exports at less than fair value have declined since 1975, while as a share of U.S. consumption these exports increased less than one percentage point.

INJURY

Section 201 of the Antidumping Act, as amended, does not set forth standards for determining whether an industry is being or is likely to be injured by reason of less than fair value imports. As a result, the Commission has traditionally exercised considerable discretion in making its determinations based upon the particular facts in each case.

Section 201 of the Act does require the Commission find that two conditions have been satisfied before an affirmative determination can be made. First, the Commission must determine that an industry is being or is likely to be injured. This determination is based upon certain economic indicators—consumption, production, capacity changes and utilization, shipments, inventory levels, employment and profits. Second, the Commission must determine that the injury is "by reason of" the less than fair value imports. This second determination is based upon an analysis of such factors as market penetration by less than fair value imports, documented lost sales of domestic manufacturers to less than fair value imports, a price depression of the impacted competitive products or price suppression. As for likelihood of injury, foreign capacity to produce for export is also considered. If the Commission finds that either condition has not been met, its determination must be negative, and it need not consider factors relevant to determining the other condition.

In the present inquiry, I found, based upon my consideration of the relevant indicators described above, that the steel wire nail industry is not being injured or threatened with injury. Commission data indicates that domestic shipments of these nails have been increasing, that unsold in-

ventories have been stable, and that U.S. production, capacity utilization the manhours utilized in this industry, and the workforce are all up. Having found no injury to exist, there is no need to consider the factors relevant to the second condition, dealing with causation of injury. Thus, I will limit my discussion to those economic indicators relevant to the question of injury.

Domestic consumption, production and capacity utilization of steel wire nails increased for each year during the period of 1975 through 1977 and during the first three quarters of 1978. Consumption rose rapidly from a recession low of 493,778 short tons in 1975 to 670,606 short tons in 1976, and 741,286 short tons in 1977. American Iron and Steel Institute data indicates a further substantial increase in the first nine months of 1978. Responses to Commission questionnaires reveal that production increases have been flatter, rising at an annual rate of 3.5% from 1975 to 1977 and 5.9% in the first nine months of 1978. However, integrated producers provided most of the responses to the questionnaire and, therefore, the aggregated data reflects the rather stagnant position of integrated producers. In contrast, data from other sources reflects substantial increases in shipments during the period, which is apparently accounted for by the growth of the nonintegrated producers.

Questionnaire responses also indicated that capacity utilization increases have been rather flat, from 72% in 1975 to 75% in 1976, 76% in 1977, and 78% for the first nine months of 1978. (Capacity utilization figures are based on a typical three-shift, five-day workweek.) Again, however, the disproportionate impact of integrated producers' responses on the questionnaire should be noted. Thus, for example, Virginia Wire and Fabric Co., an affiliate of Sivaco, testified that both it and New York Wire Mills, another Sivaco affiliate, have been operating at three shifts a day, five days a week, and have been unable to satisfy their customers' demands. Moreover, one large nail distributor submitted material to the Commission indicating that it unsuccessfully tried to purchase nails from three of the seven complainants, another distributor indicated that without Sivaco it would be out of business, and five other domestic purchasers of Canadian nails informed the Commission that domestic nail manufacturers are currently unable to meet increased domestic demand resulting from the trigger pricing system.

Inventory levels, while fluctuating seasonally, have remained relatively stable on a year-to-year basis. End-of-year inventories had 47, 50 and 46-days supply for 1975, 1976 and 1977,

respectively, and inventories at the end of September of 1977 and 1978 had a 40-days supply. Based upon testimony at the hearing, these inventory levels appear to be appropriate for an efficiently operated industry.

Employment trends in the domestic industry, also based on questionnaire responses, have generally been on the upswing, increasing from 1330 production and related workers in 1975 to 1443 in 1976 and 1600 in 1977, and 1610 employed during the first nine months of 1978. Total manhours worked by these employees showed a similar upward trend. The recent entry into the domestic industry by two Sivaco affiliates is a substantial factor in pushing employment figures up. While adjustment assistance petitions have been certified by the Department of Labor for firms involved in production of steel wire nails, the petitions included employees producing a variety of products and only a very small number of employees were in nail production.

Of the various indices examined, only one—profits—suggested the possibility of injury. However, before analyzing this factor, it is important to note that profit and loss data for an integrated firm in any industry does not always reflect an accurate picture due to the relatively common practice of transfer-pricing. This practice permits an integrated firm to arbitrarily value intra-firm transfers of goods so as to achieve a desired level of profitability for any particular segment of the firm in question.

Responses to Commission questionnaires by five integrated producers showed gross profits of to \$9.4 million, \$9.9 million and \$9.3 million for 1975, 1976 and 1977, respectively; they also show a decline in the first nine months of 1978 over the corresponding 1977 period. (Gross profits rather than net profits were developed because the integrated producers did not routinely allocate overhead expenses by products.) In addition, the ratio of gross profits to net sales declined throughout the period, primarily because integrated producers' unit value of shipments have risen at a slower rate than their unit cost of goods sold. However, data from the two nonintegrated firms surveyed—Virginia Wire and Fabric Co. and New York Mills (established in 1976 and 1977, respectively)—showed that both had gross profits in their first full year of operation. Furthermore, sharp increases in nail prices in the first nine months of 1978 will probably ease any cost-price squeeze which might have affected the integrated producers. In short, a slight decline in profit levels for the integrated producers, without any other indication of injury, is insufficient to

demonstrate injury for the domestic industry as a whole.

Another factor indicating an absence of injury in the steel wire nails industry is the impressive expansion of nail producing facilities in the United States. In addition to Virginia Wire and Fabric Co. and New York Wire Mills, mentioned above, two more plants began operations in 1977 and 1978, and three more are scheduled to open in 1979. Sivaco testified that the seven new facilities combined represent \$15 million in capital equipment and 80,000 tons of new capacity, and will employ 450 new workers in all aspects of the nail producing industry.

During the hearing and in post-hearing briefs, complainants also raised, but did not press, the issue of regional injury, suggesting that the region east of the Great Lakes has been the principal destination for less than fair value Canadian exports. The Commission has authority to determine whether injury to regional producers constitutes injury to an industry, and it appears that the industry in this proceeding might be viewed appropriately in regional terms because transportation costs are high relative to the value of the product and most sales are made to customers located within 500 miles of production facilities. However, a review of questionnaire responses indicates that trends for the region east of the Great Lakes do not differ from the national trends discussed above.

Finally, based upon my review of the relevant economic indicators discussed above, particularly the data indicating increasing U.S. consumption and stable levels of less than fair value imports from Canada, I also find the existing domestic industry is not likely to be injured. In this regard, it is relevant that the two Canadian producers found by Treasury to have exported the subject nails at less than fair value—Titan and Sivaco—argued that they had not intended to export their nails at less than fair value and that Treasury's findings had resulted from Treasury's using a method, which differed from the method used by the two companies, for calculating relative Canadian-U.S. prices. Both indicated that they had changed their method of pricing to correct this technical problem and pledged to prevent its reoccurrence. Complainant's suggestion that there may be an impending decline in the domestic construction industry, which is the largest consumer of nails, should naturally be of concern to the nail producing industry. However, if, indeed, there is an economic downturn and the industry is injured, changing economic conditions and not imports from Canada at less than fair value would have to be considered the reason for any resulting

likelihood of injury. The nail producing industry has been faring well in the past few years as generally good economic conditions, generally high levels of overall import penetration, and even cases of less than fair value import competition have all co-existed. In sum, there has been no injury "by reason of" imports at less than fair value or any other reason. Furthermore, less than fair value imports could not be held responsible for future injury to the nail producing industry in the event there is a decline in U.S. building construction.

Issued: February 2, 1979.

By order of the Commission:

KENNETH R. MASON,
Secretary.

[FR Doc. 79-4253 Filed 2-6-79; 8:45 am]

[7020-02-M]

[332-103]

BOLTS, NUTS, AND SCREWS OF IRON OR STEEL

Quarterly and Annual Surveys

Notice is hereby given that the U.S. International Trade Commission, on February 2, 1979, instituted an investigation under section 332(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(b)), for the purpose of conducting quarterly and annual surveys with respect to the bolts, nuts, and screws which are the subject of temporary duty increases by reason of Proclamation 4632, issued January 4, 1979 (44 FR 1697). The Annex to Proclamation 4632 requires the Commission to conduct such surveys. The temporary duty increases, which are for a 3-year period beginning January 6, 1979, are provided for in items 923.50 through 923.53, inclusive, of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202).

The Annex to Proclamation 4632 provides, in pertinent part, as follows:

4. *United States International Trade Commission (USITC) surveys on certain bolts, nuts and screws of iron or steel*—The USITC shall conduct surveys with respect to products of the types subject to temporary duty increases under items 923.50 to 923.53, inclusive, as follows:

(a) *Quarterly*.—Surveys by calendar quarter to obtain monthly data on U.S. production, U.S. producers' shipments, imports for consumption, U.S. exports, apparent U.S. consumption, employment, man-hours and prices. The initial survey shall cover the third and fourth quarters of 1978 and the first quarter of 1979; the last such survey shall cover the quarter which ends not less than 60 days prior to the termination of the import relief. The results of these surveys shall be published within 60 days of the end of the quarter.

(b) *Annually*.—Annual surveys to obtain from domestic producers data by calendar quarter on profits, unfilled orders, and in-

ventories, and annual data on capital expenditures and capacity; and to obtain from importers data by calendar quarter on prices, unfilled orders and inventories. The initial survey shall cover calendar year 1978, and the results of this and subsequent surveys shall be published by the end of the first quarter of each year thereafter so long as the import relief is in effect.

By order of the Commission.

Issued: February 2, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-4254 Filed 2-6-79; 8:45]

[7020-02-M]

[Investigation No. 337-TA-501]

CERTAIN SYNTHETIC GEMSTONES

Commission Request for Public Comments
Concerning Settlement Agreement

RECOMMENDATION OF "NO VIOLATION" ISSUED

In connection with the Commission's investigation, under section 337 of the Tariff Act of 1930, of alleged unfair methods of competition and unfair acts in the importation and sale of certain synthetic gemstones in the United States, the presiding officer recommended on January 12, 1979, that the Commission determine that there is no violation of section 337. The presiding officer certified the record to the Commission for its consideration. Copies of the presiding officer's recommendation may be obtained by interested persons by contacting the Office of the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

SETTLEMENT AGREEMENT SIGNED BY COMPLAINANT AND ALL RESPONDENTS

The presiding officer's recommendation of "no violation" follows a joint motion by all parties to terminate this investigation, which was supported by a settlement agreement signed by complainant and all respondents (Settlement Agreement). The presiding officer found that the record contains no evidence of the unfair acts and unfair methods of competition alleged with respect to the importation and sale of certain synthetic gemstones made in accordance with the claims of U.S. Letters Patent No. 3,742,731.

WRITTEN COMMENTS ON THE PUBLIC INTEREST REQUESTED

Since all parties have filed a joint motion to terminate this investigation, which is supported by the Settlement Agreement, and since the presiding officer has recommended termination on

the basis of the Settlement Agreement, no oral argument will be held with respect to the presiding officer's recommendation. However in light of the Commission's duty to consider the public interest, the Commission requests written comments from interested persons concerning the effect of the termination of this investigation, supported by the Settlement Agreement, upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. These written comments must be filed with the Secretary to the Commission no later than February 27, 1979. The text of the Settlement Agreement follows:

SETTLEMENT AGREEMENT

Whereas

1. Queensbury Opal Co., Ltd., an Ohio corporation (hereinafter Queensbury), and

2. Paul S. Rogell of 95 Morgan Street, Stamford, Connecticut 06905, and

3. Rogell Associates of 95 Morgan Street, Stamford, Connecticut 06905, and

4. Cathay Corporation a Connecticut corporation having a principal place of business at 95 Morgan Street, Stamford, Connecticut 06905, and

5. Incom Inc., a Massachusetts corporation having its principal place of business at 205 Chapin Street, Southbridge, Massachusetts 01550, are engaged in various civil actions, to wit:

A. Civil Action 78-357-G brought by Queensbury against Incom Inc. in the United States District Court for the District of Massachusetts;

B. Civil Action B78-35 brought by Queensbury against Paul S. Rogell and Rogell Associates in the United States District Court for the District of Connecticut (Bridgeport); and

C. An Investigation No. 337-TA-50 by the United States International Trade Commission, Washington, D.C. directed at the importation of certain gemstones initiated upon a complaint by Queensbury and involving as Respondents, Paul S. Rogell, Rogell Associates, Cathay Corporation, and Incom Inc.; and

Whereas Queensbury has asserted infringement of U.S. Patent 3,742,731 as the underlying basis for the above actions as well as asserted claims for damages for unfair competition and claims for damages arising from proceedings instituted before the United States Patent and Trademark Office; and

Whereas Paul S. Rogell owns U.S. Patent 4,030,317, and has asserted infringement of said patent by Queensbury, and

Whereas the parties desire to settle the above civil actions and disputes,

Now therefore, it is agreed as follows:

1. Queensbury hereby grants Paul S. Rogell, Rogell Associates, Cathay Corporation, Incom Inc., their respective suppliers, and any of their respective direct or indirect customers immunity of suit for infringement of any one of the claims in the United States Patent 3,742,731.

2. Each party hereto releases one another from liability as to:

(a) any and all claims each party may have with respect to any past direct or contributory infringement of U.S. Patents 3,742,731 and 4,030,317,

(b) any and all claims as each party may have and which arose as a result of disputes between certain of the parties before the United States Patent and Trademark Office, and

(c) any and all claims as each party may have against one another as a result of any prior unfair competition acts which may be actionable either at common law or under the United States Lanham Act.

3. It is hereby stipulated between Incom Inc. and Queensbury that Civil Action 78-357-G in the District Court of Massachusetts be dismissed.

4. It is hereby stipulated between Paul S. Rogell, Rogell Associates and Queensbury that Civil Action B78-35 in the District Court of Connecticut be dismissed.

5. It is hereby stipulated between the parties to petition the United States [International] Trade Commission to terminate its investigation No. 337-TA-50 for lack of an unfair act upon which importations were sought to be excluded pursuant to the Queensbury Complaint initiating said investigation.

6. (a) Queensbury herewith grants Cathay Corporation a non-exclusive license under the German Application or Patent equivalent to U.S. Patent 3,742,731 to have manufactured for it articles covered by said German Application or Patent in Germany and only for importation into the United States for sale by Cathay Corporation therein. No other license to make, use or sell articles covered by said German Application or Patent for any other purpose is granted or implied.

(b) Queensbury further grants a non-exclusive license to United States customers of Cathay Corporation under such Canadian Patent which is equivalent to U.S. Patent 3,742,731 for articles imported and sold in the United States so as to bear royalty under paragraph 7 hereof, in the event that said articles are resold by said customers in Canada.

(c) The articles licensed hereunder shall be exclusively defined by the

terms of any claim of said U.S. Patent 3,742,731.

7. Cathay Corporation, commencing with the date of this agreement, agrees to pay Queensbury two percent (2%) of its net United States sale price for any such article imported into the United States from Germany covered by said unexpired German Application or Patent which is the equivalent to U.S. Patent 3,742,731.

8. (a) Within thirty (30) days following each quarterly period, Cathay Corporation agrees to make a quarterly report to Queensbury listing the total net United States sales value of all imported royalty bearing articles sold in the United States together with a check for the royalty amount due. Queensbury shall not be entitled to receive information in such reports as to unit article cost, source of supply or identification of customers of Cathay Corporation. Royalty bearing articles shall be considered sold when invoiced.

(b) Net United States sale price shall mean Cathay Corporation's invoice price after deducting freight charges, cash discounts, or other allowances, excise taxes and import duties. No payment need be made with respect to any articles which are not accepted by customers and are returned and not paid for; any royalty payment as may have been made with respect to such article may be subtracted from any succeeding royalty payment.

(c) Cathay Corporation agrees to keep such amounts and records as shall enable an accountant to confirm the royalty reports during normal business hours. Nothing therein shall be construed to entitle such accountant to information which may identify Cathay Corporation suppliers; sources of manufacture, customers, article unit prices, sales costs or manufacturing or supplier prices. An accountant entitled to inspect such accounts and records shall be mutually acceptable to Queensbury and Cathay Corporation and may be required by Cathay Corporation to hold information learned from such inspection in confidence. Such accountant inspection shall be at Queensbury's expense.

9. Paul S. Rogell herewith grants Queensbury, its suppliers or any of its direct or indirect customers, immunity of suit for infringement of any one of the claims in U.S. Patent 4,030,317 or any other patent which may issue based upon subject matter disclosed in said patent.

10. The parties agree to announce to the trade that they have settled their disputes with the proviso that neither party shall make any representation to their respective customers or to anyone else in the trade that the settlement resulted in:

(a) a price advantage, or

(b) that either party is unable or hindered from supplying products to the trade.

11. This settlement agreement shall accrue to the benefit of and be binding upon the heirs, whole or partial successors or assigns of interest of any party hereto.

12. There are no other agreements, written or oral, express or implied, between the parties hereto concerning the subject matter of this Agreement.

Dated: December 8, 1978.

Queensbury Opal Co., Ltd., David J. Josephic

Dated: December 11, 1978.

Queensbury Opal Co., Ltd., Paul S. Rogell

Dated: December 11, 1978.

Rogell Associates, Paul S. Rogell

Dated: December 11, 1978.

Cathay Corporation, Paul S. Rogell

Dated: December 11, 1978.

Incom Inc., Louis H. Reens

ADDITIONAL INFORMATION

The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request *in camera* treatment. Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the *FEDERAL REGISTER* of March 17, 1978 (43 FR 11271).

By order of the Commission.

Issued: February 2, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-4252 Filed 2-6-79; 8:45 am]

[4410-18-M]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

PROGRAM ANNOUNCEMENT

Request for Public Comments

AGENCY: Law Enforcement Assistance Administration, Justice.

ACTION: Request for public comment.

SUMMARY: The Law Enforcement Assistance Administration (LEAA) is proposing a new program as an addition to the fiscal year 1979 Guide to Discretionary Grant Programs

(M4500.1G) announced in the *FEDERAL REGISTER* on November 3, 1978 (43 FR 51467-51468). The program provides opportunities for State Planning Agencies to undertake projects to strengthen and improve criminal justice planning and coordination, and utilizes reverted Part B (planning grant) monies under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. LEAA is publishing the text of the proposed program at this time in order to obtain public comments. All comments will be considered in the publication of the final program announcement.

DATE: Comments are due on or before March 9, 1979.

ADDRESS: Send comments to: Henry S. Dogin, Acting Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT:

Lynn Dixon, Office of Planning and Management, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 376-3762.

The text of the proposed program follows:

55. IMPROVING CRIMINAL JUSTICE PLANNING AND COORDINATION

a. *Objective.* The objective of this program is to aid selected States to strengthen and improve their criminal and juvenile justice planning and coordination functions.

b. Program Description.

(1) Problem Addressed.

(a) Over the past ten years, state governments have increased their criminal justice planning capabilities. They have analyzed problems, set goals and priorities, developed programs, and evaluated results.

(b) Nevertheless, several observers have pointed to the need to make improvements. These include greater involvement of key decisionmakers and especially elected officials; increased attention on non-federal resources; and more integration with normal government processes, such as budgeting and law-making.

(c) This program, "Improving Criminal Justice Planning and Coordination" builds upon the positive achievements of the past ten years while providing a catalyst for making improvements in criminal justice planning and coordination at the State level.

(2) Results Expected.

(a) Greater involvement by State criminal justice planning agencies in criminal and juvenile justice issues, strategies, and resources outside the confines of the Federal grant program.

(b) Increased interaction between State criminal justice planning agencies and other key decision-makers, including the Governor, members of the legislature, relevant department heads, and local officials.

(c) Increased use of State planning agency skills, resources and work products in criminal

and juvenile justice policy, program and resource allocation decision-making.

c. *Program Strategy.* States may opt for any one of the following three approaches. However, in the event that there are more applications that meet the funding criteria than can be supported with available monies, priority for grant awards will be given to those applications under options 1 and 2.

(1) Option 1—Development and Execution of Legislative and/or Executive Branch Implementation Strategies for Major Program Priorities.

This option calls for State planning agencies in concert with the Governor's Offices to take a leadership role in bringing about criminal and juvenile justice improvements through means not limited to the LEAA grant program. It assumes that States—as part of their planning efforts—have identified one or more major issues or problems that are of statewide priority, that are amenable to State action, and that, if resolved, are likely to lead to significant improvements. States applying under this option should demonstrate that the issue or problem to be addressed has been identified and documented as a priority in previous plans.

State planning agencies would develop and/or identify programs that are likely to be effective in dealing with these priority problems or issues, and that have a broad base of support within the State. The process of developing and/or identifying programs must be a participatory one, with opportunities for involvement of State and local criminal justice officials, representatives of general local government, and elected officials.

Programs developed and/or identified for implementation would require the formal endorsement of the State Supervisory Board and the Governor.

State planning agencies would develop comprehensive implementation strategies for the program(s) selected. In developing such strategies, States should consider:

(a) Gubernatorial action (e.g., adoption of the program as a major policy initiative of the Governor; incorporation in gubernatorial statements—i.e., urban strategy or crime control messages; executive orders; preparation of legislative proposals and budget.)

(b) Legislative action (e.g., enactment of state legislation authorizing the program; appropriations of state and/or federal funds.)

(c) Administrative action (e.g., changes in rules and regulations; joint funding procedures.)

While the use of LEAA funds for implementation is not prohibited, implementation of the program must be contingent upon these other actions initiated by the State.

State planning agencies would take the lead in executing these implementation strategies in concert with other relevant decision-makers.

SPAs would be expected to work closely with the Governor's office, the State Budget Office, the Legislature, principal implementing agencies, and others.

(2) Option 2—Conduct of State Government Reorganization Studies and/or Implementation of State Reorganization Plans.

Under this option, funds would be available to assist States either considering or in the process of reorganization of the executive branch of State Government where reorganization is likely to impact on or be af-

affected by criminal justice planning and coordination concerns. Possible activities that could be undertaken include: government organization studies; management consulting assistance; and transition staffing.

The aim of this alternative is to help States that, as part of a general reorganization movement or a more limited focus on criminal justice, are moving in the direction of embedding criminal justice planning and coordination functions into the workings of State government. This means greater integration of criminal justice planning and coordination with normal State processes such as budgeting, legislation, general state planning, etc., and increased acceptance of the planning approach in the States criminal justice system.

(3) Option 3—Conduct of Program Evaluations.

This option provides State planning agencies an opportunity to improve their evaluation capabilities and to expand their role in criminal justice evaluation. SPAs would conduct an evaluation of one (or more) high-priority, non-federally funded program or improvement in the State (e.g., a new law such as mandatory sentencing; a community restitution program).

In selecting evaluation topics, States should give special attention to the evaluability of the topic and the potential audience for and use of the evaluation result. The application must indicate the reasons why a particular topic has been selected, how the results will be used, and how the evaluation will be conducted. Principal users should be involved in planning the evaluation, and a plan for utilization of results should be formulated, submitted to, and endorsed by the principal intended users.

d. *Application Requirements.* (1) In preparing applications, states must conform with the requirements set forth in M 4500.1G, *Guide for Discretionary Grant Programs*. States must also describe each specific product that will result from the project, and the uses thereof.

(2) States must provide evidence that the Governor is aware of and committed to the project. To the extent feasible and appropriate, States should indicate the degree of coordination with and support from other key officials, including members of the legislature.

(3) States must describe clearly and succinctly how the proposed project will contribute to the objective and results expected under this program described above. They must fully address the respective program elements and requirements set forth under the various options.

(4) States should, as appropriate, provide supporting information regarding the responsibilities and operations of the SPA, its

role in State Government, and its relationship with other agencies.

(5) States must provide at the conclusion of the project a final report documenting the activities undertaken and the results achieved.

e. *Dollar Range and Number of Grants.* It is estimated that five to ten grants ranging from about \$25,000 to \$100,000 will be awarded. Grants will require a ten percent cash match and will be for a 12-18 month period.

f. *Eligibility.* State Planning Agencies (SPAs) are eligible to receive grants.

g. *Deadline for Submission of Applications.* Applications must be received by April 16, 1979.

h. *Criteria for Selection.* (1) Degree to which the proposed project is responsive to the objectives and requirements of the particular option selected (see paragraph c).

(2) Degree to which the application fully responds to the requirements of paragraph d.

(3) Degree to which the State has allocated non-federal resources (funds, staff, facilities, etc.) to the project.

(4) Evidence of the capability of the SPA to efficiently organize and manage the project.

(5) Extent to which the estimated cost of the project is reasonable considering the activities planned and the results anticipated.

i. *Evaluation.* Evaluation is not required, but grantees must comply with the self-assessment and monitoring requirements of Appendix 4, paragraphs 3 and 4, and Appendix 5.

HENRY S. DOGIN,
Acting Administrator.

[FR Doc. 79-4207 Filed 2-6-79; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION FOR THE
ARTS AND THE HUMANITIES

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

JANUARY 31, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that meetings of the Humanities Panel will be held at The National Endowment for the Humanities, Washington, D.C. from 9 a.m. to 5:30 p.m. on the 27th and 28th of February 1979 in Room 807.

The purpose of these meetings is to review Museums Challenge Grant ap-

plications submitted to the National Endowment for the Humanities for notification in the Fall of 1979.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen McCleary, 806 15th St. NW., Washington, D.C. 20506 or call (202) 724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee
Management Officer.

[FR Doc. 79-4171 Filed 2-6-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY
COMMISSION

APPLICATIONS FOR LICENSES TO EXPORT/
IMPORT NUCLEAR FACILITIES OR MATERIALS

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following applications for export/import licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated this day February 1, 1979, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/
Import and International
Safeguards, Office of International Programs.

IMPORT/EXPORT LICENSE APPLICATIONS SOURCE AND SPECIAL NUCLEAR MATERIAL IN KILOGRAMS

Name of applicant, date of application, date received, application number	Material type	Total element	Total isotope	End-use	Country of ultimate destination
General Electric Co., 01/10/79, 01/15/79, XSNMO1441.	3.1% Enriched Uranium.	11,965	331	Reload fuel for Fukushima 2	Japan.
Transnuclear, Inc., 01/25/79, 01/25/79, ISNM79003.	93.12% Enriched	22,071	14,006	As feed material for product From Belgium BR2 reactor.	
Transnuclear, Inc., 01/24/79, 01/25/79, XSNMO1443.	3.35% Enriched	22,090.900	740.046	Fuel for Gosgen-Daniken	Switzerland
Transnuclear, Inc., 01/24/79, 01/25/79, XSNMO1444.	93% Enriched Uranium.	11,529	10,757	Fuel for FRM reactor at Garch- ing.	West Germany.

[FR Doc. 79-4134 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-592, STN 50-593]

ARIZONA PUBLIC SERVICE CO., ET AL; (PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5)

Notice of Change of Location of Special Prehearing Conference To Be Held on February 21, 1979

FEBRUARY 1, 1979.

Before the Atomic Safety and Licensing Board.

The Atomic Safety and Licensing Board on January 26, 1979, issued an order convening a special prehearing conference in this proceeding on February 21, 1979, at the Maricopa County Board of Supervisors Auditorium in Phoenix.

The Board now has been advised that due to the design of the auditorium it will be difficult to provide adequate counsel table space for all of the many participants in this proceeding. Accordingly, it has become necessary to change the location of the special prehearing conference.

WHEREFORE, IT IS ORDERED and please TAKE NOTICE that in accordance with the Atomic Energy Act, as amended, a special prehearing conference pursuant to the provisions of Section 2.751a of the Rules of Practice of the Commission (10 CFR § 2.751a) shall be convened in this proceeding at 10:00 a.m., local time, on Wednesday, February 21, 1979, at the Ramada Inn East Resort, 3801 East Van Buren Street, Phoenix, Arizona 85008.

Dated at Bethesda, Maryland, this 1st day of February, 1979.

For the Atomic Safety and Licensing Board.

ROBERT M. LAZO,
Chairman.

[FR Doc. 79-4120 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-254]

COMMONWEALTH EDISON CO. AND IOWA-ILLINOIS GAS AND ELECTRIC CO.

Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Facility Operating License No. DPR-29, issued to

Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company which revised Technical Specifications for operation of Quad Cities Nuclear Power Station, Unit No. 1 located in Rock Island County, Illinois. The amendment is effective January 14, 1979.

The amendment revises the Technical Specifications to extend the period required to establish an inerted atmosphere in the containment beyond 24 hours. The extension is from 10 p.m. January 14, 1979 to a time no later than midnight January 21, 1979.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the formal application for amendment dated January 15, 1979, (2) Amendment No. 49 to License No. DPR-29, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Moline Public Library, 504-17th Street, Moline, Illinois 61205. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 30th day of January 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors
Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-4121 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-247]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-26, issued to Consolidated Edison Company of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility), located in Buchanan, Westchester County, New York. The amendment is effective as of its date of issuance.

The amendment adds a license condition relating to the completion of facility modifications to improve the fire protection program and modifies the Technical Specifications to include additional limiting conditions for operation and surveillance requirements for existing fire protection systems.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 15, 1978, as supplemented by letters dated March 3, 1977, April 15, 1977, May 7, 1978, September 18, 1978, October 31, 1978, November 16, 1978 and December 12, 1978; (2) Amendment No. 46 to License No. DPR-26; and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 31st day of January, 1979.

For the Nuclear Regulatory Commission.

CHARLES M. TRAMMELL,
Acting Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[FR Doc. 78-4122 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 70-2623]

DUKE POWER CO.

Amendment to Materials License SNM-1773 for Oconee Nuclear Station Spent Fuel Transportation and Storage at McGuire Nuclear Station; Notice of Reconstitution of Board

Robert M. Lazo, Esq., was the Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because of a schedule conflict Mr. Lazo is unable to continue his service on this board.

Accordingly, Marshall E. Miller, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland this 1st day of February 1979.

ROBERT M. LAZO,
Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79-4123 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-335]

FLORIDA POWER AND LIGHT CO.

Notice of Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR-67, issued to Florida Power & Light Company (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Florida. The amendment is effective as of its date of issuance.

The amendment revises Appendix B Administrative Controls of the Technical Specifications, deletes certain environmental monitoring requirements monitoring requirements and authorizes a 2°F increase in the temperature of condenser cooling water.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for this action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1973.

For further details with respect to this action, see (1) the applications for amendment dated August 1, 1977, August 29 and September 29, 1978, (2) Amendment No. 29 to License No. DPR-67 and (3) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 24th day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-4124 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-443 and 50-444]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE, ET AL.

Notice of Issuance of Amendment to Construction Permits

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Construction Permit No. CPPR-135 and Amendment No. 2 to Construction Permit No. CPPR-136 issued to the Public Service Company of New Hampshire, The United Illuminating Company, Central Maine Power Company, Central Vermont Public Service Corporation, The Connecticut Light and Power Company, Fitchburg Gas and Electric Light Company, Montaup Electric Company, New Bedford Gas & Edison Light Company, New England Power Company, and Vermont Electric Power Company, Inc. The amendments reflect changes in ownership and transfer of shares of the Seabrook Station, Units 1 and 2 (the facility), located in Rockingham County, New Hampshire. The amendments are effective as of their date of issuance.

These amendments provide for the deletion of The Connecticut Light and Power Company, and The Vermont Electric Power Company, Inc., and the addition of the Massachusetts Municipal Wholesale Electric Company and the Maine Public Service Company as applicants for all licenses previously requested, and the transfer of partial ownership shares as noted in the construction permit amendments to these applicants and from six other continuing applicants.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the amendments.

For further details with respect to this action, see (1) the application for amendments contained in Public Service Company of New Hampshire's letters, dated May 15, 1978, and October 16, 1978; (2) Amendment No. 2 to Construction Permit No. CPPR-135; (3) Amendment No. 2 to Construction Permit No. CPPR-136; and (4) the Commission's letter to Public Service Company of New Hampshire dated December 27, 1978 transmitting Amendment No. 1, and the related Safety Evaluation Report. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., and at the Exeter

Public Library, Front Street, Exeter, New Hampshire 03833.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland this 31st day of January 1979.

For the Nuclear Regulatory Commission.

STEVEN A. VARGA,
Chief, Light Water Reactors
Branch No. 4, Division of Project Management.

[FR Doc. 79-4125 Filed 2-6-79; Filed 8:45 am]

[7590-01-M]

PUBLIC SERVICE ELECTRIC & GAS CO.; (SALEM NUCLEAR GENERATING STATION, UNIT 1)

[Docket No. 50-272]

Proposed Issuance of Amendment to Facility Operating License No. DPR-70; Order Scheduling Special Prehearing Conference for Limited Appearances

Before the Atomic Safety and Licensing Board.

On November 9, 1978, Alfred and Eleanor Coleman; who have intervened as parties to this case, filed a motion to convene this Board for purposes of receiving statements from persons who desire to make limited appearances under 10 CFR § 2.715. Pursuant to 10 CFR § 2.715, a person who is not a party to a proceeding may make a statement, not under oath, setting forth his views on the matters which are before the Board for adjudication. The statement can be oral or written, and is made at the discretion of the Chairman.

The Board granted the Colemans' motion by its Order of December 15, 1978. The Order provided that a special prehearing conference would be held for the purpose of receiving these limited appearances at a date somewhat in advance of the evidentiary hearing itself. The Order also provided that this date would be set after the Office of Nuclear Reactor Regulation of the Nuclear Regulatory Commission had completed its safety evaluation and its environmental impact appraisal. The Office of Nuclear Reactor Regulation issued these documents on January 15, 1979.

NOTICE IS HEREBY GIVEN that pursuant to 10 CFR § 2.751a and 10 CFR § 715, a Special Prehearing Conference for the purpose of receiving limited appearances in the above-referenced proceeding will be held at 9:30 a.m. on Friday, February 23, 1979, at the Main Courtroom (1st Floor), Old Salem Courthouse, Broadway and

Market Streets, Salem, New Jersey. The Board will also meet at this same location from 7:00 p.m. to 9:00 p.m. on Thursday, February 22, 1979, to accept appearances by persons who are unable to appear during normal working hours.

All persons desiring to make limited appearances in this proceeding shall attend this Special Prehearing Conference. If the Chairman so determines persons desiring to make their statements orally may be subject to reasonable limit of time.

It Is So Ordered.

Dated at Madison, Wisconsin, this 31st day of January, 1979.

For the Atomic Safety And Licensing Board.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 79-4126 Filed 2-6-79; 8:45 am]

[7590-01-M]

PUBLIC SERVICE ELECTRIC & GAS CO.; (SALEM NUCLEAR GENERATING STATION, UNIT 1)

[Docket No. 50-272]

Proposed Issuance of Amendment to Facility Operating License No. DPR-70; Order Scheduling Prehearing Conference

Before the Atomic Safety and Licensing Board.

NOTICE IS HEREBY GIVEN that, pursuant to 10 CFR § 2.752, a prehearing conference in the above-reference matter shall be held at 1:30 p.m. on Thursday, February 22, 1979, in the Main Courtroom (1st Floor), Old Salem Courthouse, Broadway and Market Streets, Salem, New Jersey.

The parties are directed to be prepared to discuss the items listed in 10 CFR § 2.752. The Licensee shall also be asked to arrange a visit to the facility by the Board.

It is so ordered.

Dated at Madison, Wisconsin, this 31st day of January, 1979.

For the Atomic Safety and Licensing Board.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 79-4127 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-395]

SOUTH CAROLINA ELECTRIC AND GAS CO. AND SOUTH CAROLINA PUBLIC SERVICE AUTHORITY, VIRGIL C. SUMMER NUCLEAR STATION

Order Extending Construction Completion Date

South Carolina Electric and Gas Company and South Carolina Public Service Authority are the holders of

Construction Permit No. CPPR-94 issued by the Atomic Energy Commission* on March 21, 1973 for the construction of the Virgil C. Summer Nuclear Station presently under construction at the company's site in Fairfield County, South Carolina. By letters dated December 10, 1976 and January 14 and February 2, 1977, the permittees filed requests for an extension of the latest construction completion date for the facility from January 1, 1978 to December 31, 1980, because construction has been delayed due to (1) the change in the design of the reactor vessel support system coupled with a delay in fabrication of the embedments for the reactor vessel support system, (2) delay due to the discovery of a shear fracture zone at the site and attendant evaluation; (3) delay caused by discovery of voids in the concrete liner behind containment liner plates and attendant evaluation and corrective action; (4) redesign of the restraint system required to mitigate high energy pipe break; (5) delays due to procurement of certain critical materials required for the main steam isolation valves, component cooling water pumps and motors, service water pumps and motors, and steel for the reactor building liner; and (6) delay in completion of additional geologic contour mapping required for seismic analysis.

This action involves no significant hazards consideration, good cause has been shown for the delay, and the requested extension is for a reasonable period, the bases for which are set forth in the staff evaluation dated January 30, 1979. The preparation of an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the Order other than that which has already been predicted and described in the Commission's Final Environmental Statement for the Virgil C. Summer Nuclear Station, published in January 1973 and the Draft Environmental Statement published in September 1972. A negative Declaration and an Environmental Impact Appraisal have been prepared and are available, as are the above stated documents, for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the local public document room established for the Virgil C. Summer Nuclear Station in the Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201.

It is HEREBY ORDERED THAT the latest completion date for CPPR-

*Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day continued under the authority of the Nuclear Regulatory Commission.

94 be extended from January 1, 1978 to December 31, 1980.

Date of issuance: January 30, 1979.

For The nuclear Regulatory Commission.

ROGER S. BOYD,
Director, Division of Project
Management Office of Nuclear
Reactor Regulation.

[FR Doc. 79-4128 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-395]

VIRGIL C. SUMMER NUCLEAR STATION

Negative Declaration Supporting: Extension of Construction Permit No. CPPR-94 Expiration Date

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the South Carolina Electric & Gas Company and the South Carolina Public Service Authority (permittees) request to extend the expiration date of the construction permit for the Virgil C. Summer Nuclear Station (CPPR-44) which is located near Columbia in Fairfield County, South Carolina. The permittees requested an extension of the permit to December 31, 1980 to allow for a reasonable period for completion of construction of the Virgil C. Summer plant, and further allowance for contingencies.

The Commission's Division of Site Safety and Environmental Analysis (staff) has prepared an environmental impact appraisal relative to this change to CPPR-94. Based upon this appraisal, the staff has concluded that an environmental impact statement for this particular action is not warranted because pursuant to the Commission's regulations in 10 CFR Part 51 and the Council of Environmental Quality's Guidelines, 40 CFR 1500.6, the Commission has determined that this change to the construction permit is not a major federal action significantly affecting the quality of the human environment.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555; and at the Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201.

Dated at Bethesda, Maryland, this 30th day of January 1979.

For the Nuclear Regulatory Commission.

RONALD L. BALLARD,
Chief, Environmental Projects
Branch No. 1, Division of Site
Safety and Environmental
Analysis.

[FR Doc. 79-4129 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 50 to Facility Operating License No. DPR-28, issued to Vermont Yankee Nuclear Power Corporation (the licensee), which revised the Technical Specifications for operation of the Vermont Yankee Nuclear Power Station (the facility), located near Vernon, Vermont. The amendment is effective as of the date of its issuance.

The amendment revised the Technical Specifications to incorporate requirements for establishing and maintaining the drywell to suppression chamber differential pressure and suppression chamber water level, to maintain the margins of safety established in the NRC staff's "Mark I Containment Short Term Program Safety Evaluation", NUREG-0408. Operation in accordance with the conditions specified in NUREG-0408 has been previously authorized in 43 FR 13118, March 29, 1978.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4), and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) applications for amendment dated December 10, 1976, April 14, 1977 and May 16, 1978, (2) Amendment No. 50 to License No. DPR-28, (3) the Commission's related Safety Evaluation and (4) the Commission's Order for Modification of License dated February 13, 1976. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont. A single copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S.

Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 31st day of January 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors
Branch No. 3, Division of Op-
erating Reactors.

[FR Doc. 79-4130 Filed 2-6-79; 8:45 am]

[7590-01-M]

[Docket No. 50-301]

WISCONSIN ELECTRIC POWER CO.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 40 to Facility Operating License No. DPR-27 issued to Wisconsin Electric Power Company, which revised Technical Specifications for operation of Point Beach Nuclear Plant Unit No. 2, located about 15 miles north of Manitowoc, Wisconsin. The amendment is effective as of the date of issuance.

The amendment revises the reactor coolant system pressure-temperature heatup and cooldown curves to be applied up to seven effective full power years for Unit No. 2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 16, 1978, as supplemented January 5, 1979, (2) Amendment No. 40 to License No. DPR-27, and (3) the Commission's related letter and Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Universi-

ty of Wisconsin, Stevens Point Library, Stevens Point, Wisconsin 54481. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 30th day of January, 1979.

For the Nuclear Regulatory Commission.

CHARLES M. TRAMMELL,
Acting Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-4131 Filed 2-6-79; 8:45 am]

[7590-01-M]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Notice of Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced, (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section Nos. 14.1, "Initial Test Program—Preliminary Safety Analysis Report," 14.2, "Initial Plant Test Program—Final Safety Analysis Report," and 14.3, "Standard Plan Designs, Initial Test Program—Final Design Approval" of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review of Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Virginia 22161. The domestic price is \$70.00, including first-year supplements. Annual subscriptions for supplements alone are \$30.00. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section Nos. 14.1, 14.2, or 14.3 is \$4.00. Foreign price in-

formation is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda this 25th day of January, 1979.

For the U.S. Nuclear Regulatory Commission.

ROGER S. BOYD,
Director, Division of Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 79-4132 Filed 2-6-79; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Notice of Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 2.6, "Emergency Planning for Research Reactors," provides guidance on developing emergency plans for research reactors and describes a method acceptable to the NRC staff for complying with the Commission's regulations with regard to the content of emergency plans for these facilities.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 2.6 will, however, be particularly useful in evaluating the need for an early revision if received by April 6, 1979.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 29th day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 79-4133 Filed 2-6-79; 8:45 am]

[6820-36-M]

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

OPEN MEETING

In accordance with section 10(a) of the Federal Advisory Committee Act, Pub. L. 92-463, the National Transportation Policy Study Commission announces the following meeting:

Name: Meeting of the Commission.

Date: February 22, 1979.

Time: 9:00 a.m. to 5:00 p.m.

Place: 2167 Rayburn House Office Building, Washington, DC 20036.

Type of meeting: Open.

Contact person: Joseph LaSala, National Transportation Policy Study Commission, 2000 M St. NW, Suite 3000, Washington, D.C. 20036, 202-254-7453.

Purpose of the Commission: The National Transportation Policy Study Commission was established under Section 154 of the Federal Aid Highway Act of 1976 (PL 94-280) to report findings and recommendations with respect to the Nation's transportation needs, both national and regional, through the year 2000.

Tentative Agenda: Review of Draft Chapters; Review of Special Reports; Review of Staff Working Papers.

Dated: February 2, 1979.

EDWARD R. HAMBERGER,
General Counsel.

[FR Doc. 79-4138 Filed 2-6-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

ADVISORY COMMITTEE FOR THE PRESIDENT'S STATISTICAL SYSTEM REORGANIZATION PROJECT

Meeting

Pursuant to Pub. L. 92-463, notice is given of the convening of the Advisory Committee for the President's Statistical System Reorganization Project from 1:30 p.m. to 5:30 p.m. on February 16, 1979 and from 9:00 a.m. to 3:00

p.m. on February 17, 1979. The meeting will be held in Room 4203, New Executive Office Building, 726 Jackson Place, NW., Washington, D.C.

The Committee will review Project development and activities to date. The meeting is open to the public.

Issued in Washington, D.C. on February 1, 1979.

DAVID R. LEUTHOLD,
Acting Assistant to the
Director for Administration.

[FR Doc. 79-4137 Filed 2-6-79; 8:45 am]

[6820-97-M]

PRESIDENTIAL COMMISSION ON WORLD HUNGER

INTERNATIONAL POLICY SUBCOMMITTEE, ET AL.

Meetings

Subcommittees of the Presidential Commission on World Hunger have scheduled meetings as follows:

The International Policy subcommittee will meet on February 21, 1979.

The Public Participation and Communication Subcommittee will meet on February 26, 1979, in Washington, D.C.

The Domestic, Agriculture Policy, Consumer and Nutrition Subcommittee will meet on February 28, 1979.

These meetings will be open to observation by the public. Details as to locations and times of meetings are being developed and may be obtained by telephone at (202) 395-3505 after February 9, 1979. Persons interested in attending these meetings should address a letter to the Presidential Commission on World Hunger, 734 Jackson Place, N.E., Washington, D.C. 20006. Admission of observers will be on the basis of earliest postmark date and to the extent space is available.

DONALD B. HARPER,
Administrative Officer, Presi-
dential Commission on World
Hunger.

[FR Doc. 79-4245 Filed 2-6-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15544; File No. SR-SCE-78-4]

CINCINNATI STOCK EXCHANGE

Filing of Proposed Rule Change

JANUARY 30, 1979.

The Cincinnati Stock Exchange ("CSE") submitted on December 12, 1978, a proposed rule change under Rule 19b-4 to revise virtually all the rules of the CSE including all the existing articles of incorporation, rules,

regulations, and by-laws, with the sole exception of Rule 9D3 (Temporary) which governs the CSE's multiple dealer trading system. The CSE's proposed new rules will consist of three parts: amended articles of incorporation, by-laws, and rules.

Publication of the submission is expected to be made in the FEDERAL REGISTER during the week of February 15, 1979. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission on or before March 9, 1979. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CSE-78-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority,

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-4095 Filed 2-6-79; 8:45 am]

[8010-01-M]

[Release No. 34-15544; File No. SR-CSE-78-4]

CINCINNATI STOCK EXCHANGE

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 June 4, 1975, notice is hereby given that on December 12, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change constitutes a complete revision of virtually all the rules of the Cincinnati Stock Exchange (the "Exchange"). Consequently, all the Exchange's existing Rules, Regulations and By-laws ("Old Rules") are to be deleted, with the exception of Rule 9D3 (Temporary) Multiple Dealer Trading ("Rule 9D3").

Rule 9D3 was ordered effective by the Commission on April 18, 1978, and is included herein solely to reflect the technical and conforming changes which are necessary to achieve integration of Rule 9D3 with the proposed new rules. No changes of a substantive nature have been made to Rule 9D3.

The Exchange's proposed new rules are to consist of three parts: Amended Articles of Incorporation, a Code of Regulations ("By-laws") and a set of Rules. The By-laws deal principally with the organization and administration of the Exchange and other fundamental matters, while the Rules cover the areas normally dealt with by exchange rules. A summary of the proposed new Articles of Incorporation, By-laws and Rules of the Exchange follows:

ARTICLES OF INCORPORATION

The Amended Articles of Incorporation set forth the name of the corporation, its principal place of business and the purposes for which it was formed.

BYLAWS

Article I—Definitions

This Article contains definitions used both in the By-laws and in Exchange Rules.

Article II—Exchange Membership

Article II sets forth the various classes of Exchange membership (proprietary members and access participant members), and defines the rights, privileges, duties and obligations of Exchange membership. Membership eligibility standards and restrictions on admittance to or continuance of membership on the Exchange also are covered.

This Article also contains requirements for persons becoming associated with members and sets forth procedures for the discontinuance, termination and cancellation and sale of Exchange memberships.

It also establishes some general housekeeping rules for membership meetings, including voting procedures, quorum requirements and action without a meeting.

Article III—Dues, Assessments, and Other Charges

Article III sets forth the standards for prescribing dues, assessments and other charges.

Article IV—Prohibitions or Limitations on Access to the Exchange or Member Services

This Article sets forth listing requirements for securities traded on the Exchange, as well as criteria for unlisted trading privileges and de-listing.

Article V—Exchange Organization and Administration

Article V contains provisions governing the management and administration of the affairs of the Exchange. It sets forth the term of office of members of the Board of Trustees, the manner in which they are selected and the manner in which vacancies are filled. It also contains provisions for the conduct of meetings, quorums and voting by Trustees.

Article VI—Committees

Article VI provides for the establishment of committees of the Board of Trustees, including a membership committee, a business conduct committee, a securities committee, an appeals committee, an executive committee and a nominating committee. It also contains provisions for the appointment of members to the committees, filling of vacancies and removal of members.

Article VII—Officers and Employees

This Article provides for the creation of officers of the Exchange, including a Chairman of the Board of Trustees, President, Secretary, Treasurer and such other officers as may be appointed by the Board of Trustees. Provision is made for the tenure and appointment of officers and their removal.

Article VIII—Indemnification of Trustees, Officers and Employees

This Article governs indemnification of officers, other employees and Trustees and permits liability insurance for such officials.

Article IX—Amendments to By-Laws

This Article sets forth the manner in which amendments may be made to the By-laws.

Article X—Adoption of and Amendments to Exchange Rules

Article X sets forth the procedures by which Exchange Rules are adopted by the Board of Trustees.

ARTICLE XI—Commissions

Article XI states that no Exchange Rule or By-law shall be construed to permit, require or authorize the fixing of rates of commissions for transactions on the Exchange.

EXCHANGE RULES

CHAPTER I—Adoption, Interpretation and Application of Rules

This Chapter governs the interpretation of Exchange Rules and the applicability of exchange Rules to members and persons associated with members.

CHAPTER II—Definitions

Chapter II provides that, unless the context otherwise requires or unless defined in Exchange Rules, the terms used in the Exchange Rules are to have the same meaning as in the By-laws. Presently, this Chapter only contains one additional defined term ("designated self-regulatory organization").

CHAPTER III—Rules of Fair Practice

Chapter III defines the standards of business practices required of members. Prohibitions are set forth in this Chapter concerning various conduct (e.g., fraudulent devices and false statements). Also, this Chapter governs advertising practices, fair dealings with customers, recommendations to customers for securities purchases, prompt receipt and delivery of securities, charges for services performed, discretionary accounts, use of customers' securities and funds and other practices.

CHAPTER IV—Books and Records

Chapter IV governs books and records requirements for Exchange members and requires the furnishing of books and records to the Exchange upon request. Also covered in this Chapter is the disclosure of the financial condition of members to their customers.

CHAPTER V—Supervision

Chapter V governs the responsibility of members for supervision of associated persons. This Chapter also prescribes recordkeeping requirements for supervisory purposes.

CHAPTER VI—Margin Accounts

Chapter VI governs margin requirements imposed on Exchange members and the grantings of extensions of time in meeting margin requirements under Regulation T adopted by the Board of Governors of the Federal Reserve System.

CHAPTER VII—Suspension by Chairman or President

Chapter VII provides for summary suspension of Exchange members in certain specified instances, including instances where the member cannot be permitted to continue in business with safety to its customers, creditors or other members of the Exchange. Provision is made for reinstatement and review of such actions.

CHAPTER VIII—Discipline

This Chapter governs the disciplinary procedures for Exchange members and persons associated with a member. The rules cover the initiation of investigations, charges against the member or associated person, procedures for hearings on charges, offers of settlement and review procedures. Provision is also made for summary proceedings in certain instances.

CHAPTER IX—Arbitration

Chapter IX establishes a system of arbitration of disputes. Mandatory arbitration is required for disputes between members; arbitration is permitted for disputes between members and nonmembers (i.e., customers) upon the agreement of both parties to the dispute after the dispute arises. These rules require arbitration of such disputes to be conducted in accordance with the rules of the American Arbitration Association unless the rules set forth in this Chapter with respect to the arbitration of small claims arising between a public customer and a member or person associated with a member are invoked.

CHAPTER X—Adverse Action

Chapter X governs review procedures for persons aggrieved by adverse actions of the Exchange (e.g., denial of admission to listed trading privileges). This Chapter sets forth due process procedures for such action, including conduct of hearings, decisions by a committee and review by the Board of Trustees.

CHAPTER XI—Trading Rules

This Chapter governs trading of securities on the Exchange, including hours of trading, units of trading, price variations, trading ex-dividend and other rights and other matters. Chapter XI also contains the Exchange's multiple dealer trading rule, Rule 9D3, which was previously approved by the Commission. Rule 9D3 is being resubmitted as part of this proposed rule change solely to reflect the technical and conforming changes which are necessary to achieve integration of Rule 9D3 with the proposed new rules.

CHAPTER XII—Trading Practice Rules

Chapter XII contains prohibitions against market manipulation, fictitious transactions, excessive sales by a member, manipulative transactions and dissemination of false information. This Chapter also establishes customer priorities in transactions and covers best execution, trading suspensions, and publication of transaction reports.

The rules do not contain provisions specifically prescribing a system of auction pricing based on price and time priority, as does the multiple dealer trading rule; however, Rule 11.8(a)(4) requires qualified dealers to give precedence to all nonmember orders, and of course a member is subject to a general duty to obtain the best execution (in accordance with Rule 12.11) of each order entrusted to it as a broker.

In addition, to the extent a member does not qualify as a market maker, within the meaning of section 11(a) of the Securities Exchange Act, as amended by the Securities Act Amendments of 1975 (the "Act"), it can trade for its own account only pursuant to the conditions established by the rules thereunder, including Rules 11a1-1(T) and 12a2(T), both of which contain conditions that would negate any trading advantages that otherwise might be available to a member. In any event, a complex scheme of floor trading rules would be inappropriate in view of the nascent stage of the Exchange's marketplace and the limited amount of trading that occurs on its floor.

Chapter XIII—Miscellaneous Provisions

This Chapter includes comparison and settlement requirements, provisions for failure to deliver and receive, and rules governing forwarding of proxy materials.

Purpose of Proposed Rule Change

The purpose of the proposed rule change—including both the deletion of all Old Rules (except as noted above) and the adoption of the proposed new By-laws and Rules—is to eliminate outmoded provisions and generally to bring the Exchange's rules into conformity with the Act.

Basis Under the Act for Proposed Rule Change

Because of the comprehensive nature of the proposed rule change, it is not feasible to specify which of the bases set forth in Securities Exchange Act Release No. 11604 underlie each proposed new Article, By-law and Rule. Indeed, the proposed rule change in its entirety is designed to

satisfy and comply with all the requirements of Section 6(b) of the Act, which correspond to the first seven bases enumerated in item 4(a) of Form 19b-4A.

Comments Received From Members, Participants, or Others on Proposed Rule Change

Comments on the proposed rule change have not been solicited, although the Exchange has taken into account in preparing the proposed rule change certain comments informally provided by the staff of the Commission in connection with the Exchange's prior filing under File No. SR-CSE-77-1.

Burden on Competition

The Exchange believes that in general its Amended Articles of Incorporation, By-laws and Rules do not impose a burden on competition and that to the extent any particular provision thereof may be deemed to do so, such burden is necessary and appropriate in furtherance of the purposes of the Securities Exchange Act. It has been the objective of the Exchange in preparing the proposed rule change to eliminate burdens on competition wherever practicable.

Extension of Time Period for Commission Action

The Exchange consents to whatever extension of time periods specified in Section 19(b)(2) of the Act the Commission believes is necessary for proper review.

Within 35 days of the February 7, 1979, date of publication of notice of the proposed rule change in the FEDERAL REGISTER, (March 14, 1979), or within such longer period (i) as the Commission may designate, up to 90 days after such date (May 8, 1979), if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submis-

sions should refer to the file number referenced in the caption above and should be submitted on or before March 9, 1979.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 30, 1979.

[FR Doc. 79-4098 Filed 2-6-79; 8:45 am]

[8010-01-M]

[Release No. 15543; File No. SR-NYSE-78-69]

NEW YORK STOCK EXCHANGE, INC.

Filing of Proposed Rule Change

JANUARY 30, 1979.

The New York Stock Exchange, Inc. ("NYSE") submitted on December 26, 1978, a proposed rule change under Rule 19b-4 to impose sanctions of suspension or loss of approved status against employees of NYSE member firms and against NYSE approved persons who fail to pay NYSE fines within 45 days after they become payable.

Publication of the submission is expected to be made in the FEDERAL REGISTER during the week of February 5, 1979. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission on or before March 9, 1979. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR-NYSE-78-69.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-4096 Filed 2-6-79; 8:45 am]

[8010-01-M]

[Release No. 34-15543; File No. SR-NYSE-78-691]

NEW YORK STOCK EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on December 26, 1978, the abovementioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED RULE CHANGE

The text of the proposed rule amendment is attached as Exhibit I-A.

PURPOSE OF PROPOSED RULE CHANGE

The Exchange currently has the authority to suspend a member for non-payment of any sums due the Exchange (Article X, Section 5(a)), and to suspend the members of a member organization which fails to pay a sum due the Exchange (Article X, Section 5(b)). Additionally, an individual's allied membership may be terminated for his failure to pay a fine (Article XI, Section 9). However, the Exchange has no similar provision to suspend an employee or an approved person.

Currently, if an approved person or an employee of a member organization is found by the Exchange to have violated a provision of the Act, a rule under the Act, or a rule of the Exchange, and the Exchange imposes a fine, the Exchange's rules do not address the problem of collecting the fine. Therefore, in such cases, it becomes necessary for the Exchange to bring a separate proceeding alleging a violation of the written agreement by which the employee or approved person has agreed to abide by Exchange rules and sanctions. This second proceeding necessitates a second hearing and all the other procedural steps laid out in Exchange Rule 476. It may eventually result in suspension of the employee or approved person from association with a member, on the ground that that person had failed to abide by the written agreement with the Exchange. The Exchange's right to suspend for that reason is set forth in Exchange Rule 476(a).

Proposed Rule 476(k) would obviate the need for a second proceeding by providing that the Exchange may, after giving proper notice, summarily suspend an employee or approved person from association with a member if the employee or approved person fails to pay a fine within 45 days of the date on which the fine became due.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

(i) Without a procedure for directly enforcing the imposition of a fine on an employee of a member or an approved person, the Exchange is fettered in its ability to discharge its responsibility, under Section 6(b)(1) and Section 19(g)(1)(a) of the Act, to enforce compliance with the Act, the rules thereunder, and its own rules.

(ii) Inapplicable.

(iii) Inapplicable.

(iv) Inapplicable.

(v) By establishing a more direct procedure for enforcement against associated persons, the proposed rule change would enhance the Exchange's ability to discharge its responsibility, under Section 6(b)(5), to deter fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.

(vi) By adopting a penalty for the non-payment of fines, the proposed rule change would provide, consistent with Section 6(b)(6), that associated persons are appropriately disciplined for violations of the Act, the rules thereunder, and the rules of the Exchange.

(vii) The proposed rule change is in accordance with Section 6(d) of the Act. Although the proposed rule change calls for a "summary" enforcement procedure, it is important to remember that this enforcement procedure could be used only after a disciplinary proceeding which accorded the full procedural protections required by Section 6(d)(1).

(viii) Inapplicable.

NOTE ON PROPER JURISDICTION

The proposed rule change is not contrary to the prohibition of the last clause of Section 6(b)(5) of the Act. Indeed, it does not raise any questions of jurisdiction, because it provides only for a new enforcement rule which could be used only in connection with the valid imposition of a fine. The Exchange's "jurisdiction" to impose fines on associated persons of member firms would be neither expanded nor contracted by the proposed rule change.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGE

Comments were not solicited or received on this proposal.

BURDEN ON COMPETITION

This proposal will not impose any burden on competition.

Within 35 days of the February 7, 1979 date of publication of this notice in the FEDERAL REGISTER (March 14, 1979), or within such longer period (i) as the Commission may designate up to 90 days of such date (May 8, 1979), if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before March 9, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 30, 1979.

New Language Italicized

PROPOSED AMENDMENT TO RULE 476

(k) *Any approved person or registered or non-registered employee who shall neglect to pay any fine within forty-five days after the same shall become payable may, after written notice mailed to such person at either his office or last place of residence as reflected in Exchange Records, be summarily suspended from association in any capacity with a member organization or have his approval withdrawn until such fine is paid. (See Art. X, Sec.*

5 and Art. XI, Sec. 9 for penalties imposed upon members, allied members and members organizations for failure to pay fines or other sums due the Exchange).

[FR Doc. 79-4100 Filed 2-6-79; 8:45 am]

[8010-01-M]

[Release No. 10570; 812-4046]

NUVEEN MUNICIPAL BOND FUND, INC.

Filing of Application for an Order Amending a Previous Order Granting Exemption

Notice is hereby given that Nuveen Municipal Bond Fund, Inc. ("Fund"), 230 West Monroe Street, Chicago, Illinois 60606, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act") filed an application on December 28, 1978, requesting an order of the Commission amending, in the manner described below, an earlier order of the Commission dated December 17, 1976 (Investment Company Act Release No. 9578). This earlier order, pursuant to Section 6(c) of the Act, exempted from the provisions of Section 22(d) of the Act the offer and sale of Fund shares at net asset value, without a sales charge, under a dividend reinvestment program ("Plan") for the certificateholders of Nuveen Tax-Exempt Bond Fund and Nuveen Tax-Exempt Bond Fund-Medium Term ("Trusts"), two unit investment trusts sponsored by John Nuveen & Co. Incorporated ("Nuveen"), the principal underwriter of the Fund. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Fund's investment objective is providing its shareholders as high a level of current interest income exempt from Federal income tax as is consistent with preservation of capital. All of the Fund's assets will consist of (1) municipal bonds rated at the time of purchase within the four highest grades by Moody's Investors Service (Aaa, Aa, A, and Baa) or Standard and Poor's Corporation (AAA, AA, A, and BBB); (2) unrated municipal bonds which, in the opinion of Nuveen Advisory Corp., the Fund's investment adviser, have credit characteristics equivalent to Bonds rated Baa or BBB or better by such services, provided that the Fund may not invest more than 10% of its assets in such unrated bonds; (3) certain temporary investments, the interest on which may or may not be exempt from Federal income tax, and (4) cash. Nuveen Advisory Corporation is a wholly-owned subsidiary of Nuveen organized in September, 1976, and acts as investment

adviser to the Fund pursuant to an Investment Management Agreement.

The Plan, as currently administered, permits certificateholders of the Trusts to purchase shares of the Fund, without a sales charge, by reinvestment of dividends from the Trusts. No initial or subsequent minimum investment is applicable to such purchases. According to the application, certificateholders of the Trusts receive, upon request, a current prospectus for the Fund, together with an application form, execution of which results in an election to receive distributions of the Trusts in shares of the Fund. The Fund further represents that such an election to participate in the Plan requires that primary market purchasers in the Trusts also elect to receive distributions from the Trusts on a quarterly rather than semi-annual or monthly basis.

Secondary market purchasers in the Trusts who elect to participate in the Plan receive distributions from the Trusts in accord with the payment option selected by the previous certificateholder. In addition, participants in the Plan are informed that any election to receive Trust distributions in shares of the Fund will be effective until revoked in writing by notice to the United States Trust Company of New York, the Trustee of the Trusts.

Expenses of offering the Plan to certificateholders of the Trusts are borne by Nuveen as principal underwriter of the Fund. Once a certificateholder elects to participate in the Plan, his account is handled and the expenses thereof borne in the same manner as the account of any other shareholder of the Fund.

The Fund hereby seeks to extend the Plan to the certificateholders of Series 1 and subsequent series (as created) of Nuveen Tax-Exempt Bond Fund-Multi State ("Multi-State"), a newly created unit investment trust sponsored by Nuveen. According to the application, the investment objectives of Multi-State will be to earn tax exempt income and conserve capital through a fixed investment in tax-exempt bonds. To this end, each series of Multi-State will consist of two or more investment portfolios (combined under one trust indenture and agreement) comprised of municipal bonds rated "A" or better by either Standard & Poor's Corporation or Moody's Investors Service, Inc. (including provisional or conditional ratings) and issued primarily by or on behalf of the State for which such investment portfolio will be named (e.g., "California Trust") including counties, municipalities, authorities and political subdivisions thereof, or issued by certain territories of the United States. The application further represents that the interest earned on the bonds con-

tained in investment portfolio described above will be exempt from applicable federal and state income taxes on the basis of the opinion of recognized bond counsel for the issuing governmental authorities. The application further states that the assets of each series of Multi-State will consist of municipal bonds deposited in Multi-State prior to the public offering of units thereof, along with accrued and undistributed interest on such municipal bonds, and undistributed cash realized from the disposition of such bonds.

According to the application, interest income will be distributed semi-annually to the certificateholders of Multi-State unless such certificateholders elect to receive quarterly distributions through participation in the Plan. Other monies received by Multi-State will be credited to the appropriate principal account of a certificateholder and distributed semi-annually, subject to a minimum per unit amount. Appropriate disclosure of the operations of the Plan will be made in the prospectus for each series of Multi-State, including the fact that the investment policies, restrictions, and objectives of the Fund and Multi-State differ in certain respects and that the Fund may make investments in municipal bonds which Multi-State is not permitted to make.

The Fund asserts that the dividend reinvestment program proposed to be offered to the certificateholders of Multi-State will follow the same operational procedures of the Plan currently in effect. Accordingly, the Fund contends that the rationale for allowing certificateholders of the Trusts to participate in the Plan and thereby purchase Fund shares without a sales charge is equally applicable to the certificateholders of Multi-State. Furthermore, the Fund asserts that participation of certificateholders of Multi-State in the Plan will have no adverse effect on the Plan as it is currently being administered. On the basis of the foregoing, the Fund argues that the certificateholders of Multi-State should be allowed to participate in the Plan and reinvest distributions received from Multi-State into shares of the Fund without paying a sales charge.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except to or through a principal underwriter for distribution or at a current offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person, except a dealer, a princi-

pal underwriter or the issuer except at a current public offering price described in the prospectus. Rule 22d-1 under the Act permits certain variations in sales load, none of which it is alleged are applicable to the Plan.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Act or of any rule or regulation promulgated thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 26, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-4097 Filed 2-6-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Application No. 05/05-5133]

NORTHERN CAPITAL CORP.

Application for a License To Operate as a
Small Business Investment Company

An application for a license to operate as a small business investment company under Section 301(d) of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*) has been filed by Northern Capital Corporation (applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1978).

The officers and directors are as follows:

Joseph Ducharme, 1017 Walnut Street, Batavia, Illinois 60510; President and Director.

William Bohataka, 1N101 Elm Road, West Chicago, Illinois 60185; Vice President and Director.

Melvin Jones, 1855 Tall Oaks Drive, Aurora, Illinois 60505; Secretary, Treasurer, and Director.

The applicant will maintain an office at 1017 Walnut Street, Batavia, Illinois 60510, and will begin operations with paid-in capital and paid-in surplus of \$300,000 derived from the sale of 3,000 shares of common stock at \$100 per share to ED, II, Inc. Applicant intends to work closely with its parent, ED, II, Inc., in financing the sales of Rug Doctor Rents, carpet cleaning equipment to existing and newly established companies.

ED, II, Inc. is controlled by Mr. Ducharme and is committed to increased the applicant's private capital to \$500,000 by October 1, 1979.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management and the probability of successful operations of the applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and SBA Rules and Regulations.

Any person may, on or before February 22, 1979, submit to SBA written

comments on the proposed applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Batavia, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: January 30, 1979.

PETER F. McNEISH,
Deputy Associate
Administrator for Investment.

[FR Doc. 79-4140 Filed 2-6-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS AND INDUSTRIAL INNOVATION

Hearing

Pursuant to statutory authority set forth in Section 634d of Title 15, United States Code, the Chief Counsel for Advocacy of the Small Business Administration, Milton D. Stewart, Esquire, with the approval of the Administrator A. Vernon Weaver, will conduct public hearings in Washington, D.C., on February 22nd and 23rd, 1979, on Small Business and Industrial Innovation. The hearings will convene each day at 10:00 AM (E.S.T.) at the Hay Adams Hotel/John Hay Room, 800 16th Street, N.W., Washington, D.C.

The Office of the Chief Counsel for Advocacy will consider the adequacy of current Federal Policy in promoting innovation by small business science and technology firms and evaluate proposals designed to expand small business innovation.

Participants: chief executives of small business science and high technology firms, venture capital specialists and related government officials have been asked to testify.

The hearing is open to the public. Any member of the public may file a written statement with the Office of the Chief Counsel for Advocacy before, during or after the hearings. All communications or inquiries regarding these hearings should be addressed to: Jere W. Glover, Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, 1441 L Street, N.W., Room 219, Washington, D.C. 20416, 202-653-6808.

MILTON D. STEWART,
Chief Counsel for Advocacy.
[FR Doc. 79-4141 Filed 2-6-79; 8:45 am]

NOTICES

[8025-01-M]

(License No. 05/05-5134)

**CONTROL DATA COMMUNITY VENTURES
FUND, INC.****Issuance of a License To Operate as a Small
Business Investment Company**

On December 1, 1978, a notice was published in the FEDERAL REGISTER (43 FR 56302), stating that Control Data Community Ventures Fund, Inc. located at 8100-34th Avenue South, Bloomington, Minnesota 55420, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1978) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on December 16, 1978, and no comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 05/05-5134 to Control Data Community Ventures Fund, Inc.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 1, 1979

PETER F. MCNEISH,
*Deputy Associate
Administrator for Investment.*

[FR Doc. 79-4197 Filed 2-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area #1572]

ILLINOIS**Declaration of Disaster Loan Area**

Marshall, Adams, Boone, Bureau, Carroll, Cass, Champaign, Cook, DeKalb, DeWitt, DuPage, Ford, Fulton, Grundy, Henderson, Henry, Iroquois, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, McDonough, McHenry, McLean, Mercer, Ogle, Peroria, Rock Island, Stark, Stephenson, Tazewell, Warren, Whiteside, Winnebago, Woodford, Madison, Randolph and St. Clair Counties and adjacent counties, within the State of Illinois, constitute a disaster area as a result of damage caused by ice storms, snowstorms, high winds and blizzard conditions which occurred on December 31, 1978, through January 15, 1979. Applications will be processed under the provisions of Public Law 94-305. Interest is 7% percent. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 2, 1979, and for economic injury until the close of business on November 1, 1979, at:

Small Business Administration, District Office, 219 South Dearborn Street, Chicago, Illinois 60604.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 1, 1979.

HAROLD A. THEISTE,
Acting Administrator.

[FR Doc. 79-4193 Filed 2-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No.
1566]

KENTUCKY**Declaration of Disaster Loan Area**

The area of Main Street in the town of London, Laurel County, Kentucky, constitutes a disaster area because of damage resulting from natural gas explosion and fire which occurred on January 16, 1979. Applications will be processed under provisions of Pub. L. 94-305. Interest rate is 7% percent. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 2, 1979, and for economic injury until close of business on October 31, 1979, at:

Small Business Administration, District Office, Federal Office Building—Room 188, 600 Federal Place, Louisville, Kentucky 40202.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 31, 1979.

HAROLD A. THEISTE,
Acting Administrator.

[FR Doc. 79-4195 Filed 2-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No.
1569]

MASSACHUSETTS**Declaration of Disaster Loan Area**

Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk and Worcester Counties and adjacent counties within the State of Massachusetts constitute a disaster area because of physical damage resulting from rainfall, gale winds, high tides, surge and flooding which occurred on January 24, 1979, through January 29, 1979. Applications will be processed under provisions of Public Law 94-305. Interest rate is 7% percent. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 2, 1979, and for economic injury

until the close of business on October 30, 1979, at:

Small Business Administration, District Office, 150 Causeway St., 10th Floor, Boston, Massachusetts 02114.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1979.

HAROLD A. THEISTE,
Acting Administrator.

[FR Doc. 79-4196 Filed 2-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No.
1570]

RHODE ISLAND**Declaration of Disaster Loan Area**

The State of Rhode Island constitutes a disaster area as a result of physical damage caused by storms, rainfall and flooding which occurred on January 20, 1979 through January 26, 1979. Applications will be processed under provisions of Pub. L. 94-305. Interest rate is 7% percent. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 2, 1979, and for economic injury until close of business on October 30, 1979, at:

Small Business Administration, District Office, 57 Eddy Street, Providence, Rhode Island 02903.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 30, 1979.

HAROLD A. THEISTE,
Acting Administrator.

[FR Doc. 79-4194 Filed 2-6-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No.
1545, Amdt. No. 1]

TENNESSEE**Declaration of Disaster Loan Area**

The above-numbered Declaration (See 43 F.R. 54153) is amended by adding the following counties:

County, Natural Disaster(s) and Date(s)

Benton, Drought, 06/15/78-10/30/78
Crockett, Drought, 05/27/78-11/03/78
Hardin, Drought, 06/15/78-10/30/78
Henderson, Drought, 06/15/78-10/30/78

and adjacent counties within the State of Tennessee as a result of natural disasters as indicated. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on

May 14, 1979, and for economic injury until the close of business on August 13, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1979.

HAROLD A. THEISTE,
Acting Administrator.

IFR Doc. 79-4192 Filed 2-6-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Amdt. No. 2 to I.C.C. Order No. 16 under Service Order No. 1344]

ALL RAILROADS

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 16, and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 16 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 2, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., January 26, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 25, 1979.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

IFR Doc. 79-4176 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Exception No. 1 to Third Revised Service Order No. 1315]

ALL RAILROADS

General Car Demurrage Tariff

Pursuant to the authority vested in the Railroad Service Board by Section (a)(1)(ix) of Third Revised Service Order No. 1315, the free-time periods authorized by the following items in General Car Demurrage Tariff 4-K, I.C.C. H-74, issued by D. M. Rogers, supplements thereto or reissues thereof, shall apply to cars subject to those items in lieu of the free-time periods

specified in Section (a)(2) of Revised Service Order No. 1315.

Item Numbers:	Railroad
116.....	The Apache Railway Company
118-119.....	The Atchison, Topeka and Santa Fe Railway Company
121-123.....	Burlington Northern Inc.
125-126.....	Chicago, Rock Island and Pacific Railroad Company
132.....	Denver and Rio Grande Western Railroad Company
140.....	Oregon & Northwestern Railroad Company
142-151.....	Union Pacific Railroad Company
176.....	Burlington Northern Inc.

Effective 7:00 a.m., February 1, 1979.

Issued at Washington, D.C., January 30, 1979.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member John R. Michael not participating.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

IFR Doc. 79-4185 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Exception No. 2 to Third Revised Service Order No. 1315]

ALL RAILROADS

Demurrage at Origin

The grain traffic of certain railroads provide additional free-time for the furnishing of billing instructions authorizing the movement from origin of carloads of grain in order to provide sufficient time to secure inspection and grade prior to billing. Shipments inspected and graded at origin are not normally subject to inspection at destination prior to placement for unloading. The total time for loading, sampling and grading at origin is substantially less than the time required for loading and subsequent destination inspection and grading prior to placement. Because Third Revised Service Order No. 1315 limits to twenty-four (24) hours the free-time allowed for loading and furnishing instructions for forwarding, many shippers of grain are reverting to destination inspection in order to avoid demurrage at origin, thus increasing the total time required for loading and inspection.

It is ordered, That, pursuant to the authority vested in the Railroad Service Board by Section (a)(1)(ix) of Third Revised Service Order No. 1315, car loads of grain which are inspected and graded at origin shall be granted the free-time periods provided by the applicable tariffs authorizing such services, subject to a maximum free-time period not to exceed thirty-six (36) hours.

It is further ordered, That cars of grain given thirty-six (36) hours free-time for loading, inspection and billing shall not be eligible for inspection at destination or at any point intermediate between origin and destination. Billing on such cars must be endorsed:

"WAIVE INSPECTION—INSPECTED AT ORIGIN"

Effective 7:00 a.m., February 1, 1979.

Issued at Washington, D.C., January 30, 1979.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member John R. Michael not participating.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

IFR Doc. 79-4186 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Notice No. 22]

ASSIGNMENT OF HEARINGS

FEBRUARY 2, 1979.

Cases assigned for hearing postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 59531 (Sub-108F), Auto Convoy Co., now assigned for hearing on March 13, 1979, (2 days), at Albuquerque, New Mexico in a hearing room to be later designated.

MCF 13668F, Garrison Motor Freight, Inc.—Purchase (Portion)—The Rock Island Motor Transit Company, now assigned March 6, 1979, at Washington, D.C. is cancelled transferred to Modified Procedure.

MC 42000 (Sub-6F), Texas Interstate Motor Express, Inc., now assigned for hearing on March 21, 1979, at Dallas, Texas and will be held in Room 5A15-17, Federal Building.

MC 23618 (Sub-34F), McAllister Trucking Company, A Corporation DBA Matco, now assigned for hearing on March 13, 1979 at Dallas, Texas and will be held in Room 5A15-17, Federal Building.

MC 61403 (Sub-256F), The Mason and Dixon Tank Lines, Inc., now assigned for hearing on March 14, 1979, at Dallas, Texas and will be held in Room 5A15-17, Federal Building.

37084, OKC Corporation V. Missouri Kansas Texas Railroad Company, ET AL.,

now assigned for hearing on March 19, 1979 at Dallas, Texas and will be held in Room 5A15-17, Federal Building.

MC 117940 (Sub-285F), Nationwide Carriers, Inc., now assigned for hearing on March 26, 1979, at St. Paul, Minnesota and will be held in Room 584, Federal Building.

MC 5227 (Sub-40F), Eckley Trucking, Inc., now assigned for hearing on March 13, 1979, at Portland, Oregon and will be in Room 103, Pioneer Court House.

MCF 13629 Shoemaker Trucking Company—Purchase (Portion)—Herrett Trucking Co., Inc., now assigned for hearing on March 15, 1979, at Portland, Oregon and will be held in Room 103, Pioneer Court House.

MC 124692 (Sub-241F), Sammons Trucking, A Corporation, now assigned for hearing on March 14, 1979, at Portland, Oregon and will be held in Room 103, Pioneer Court House.

MC 141532 (Sub-29F), Pacific States Transport, Inc., now assigned for hearing on March 19, 1979, at Portland, Oregon and will be held in Room 103, Pioneer Court House.

MC 141532 (Sub-30F), Pacific States Transport, Inc., now assigned for hearing on March 19, 1979, at Portland, Oregon and will be held in Room 103, Pioneer Court House.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4187 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28943F]

BRANDON CORP. OPERATION OF A LINE OF RAILROAD IN DOUGLAS COUNTY, NE

BRANDON CORP., 1900 One First National Center, Omaha, NE 68102, represented by William T. Oakes, Esq. Kennedy, Holland, DeLacy & Svoboda, 1900 One First National Center, Omaha, NE 68102, hereby give notice that on the 19th day of January, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application under Section 10901 of the Interstate Commerce Act (formerly Section 1(18)) for a decision approving and authorizing the operation of a line of railroad, a distance of 17.3 miles in Douglas County, NE.

Brandon Corp. is organized to operate over tracks formerly operated by the South Omaha Terminal Railway Company (SOT) including the performance of switching services to or from abutting industries including intermediate switching between other railroads in the Omaha-South Omaha, NE, switching district. Applicant is operating under Service Order No. 1317 dated August 7, 1978.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the

meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—Nat'l Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. *See Implementation—Nat'l Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4184 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 8 under Service Order No. 1344]

CHESAPEAKE AND OHIO RAILWAY CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 8 (The Chesapeake and Ohio Railway Company), and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 8 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., April 30, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 26, 1979.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4177 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Rule 19, Ex Parte No. 241; Amdt. No. 1 to Rev. Exemption No. 155]

EXEMPTION UNDER PROVISION OF MANDATORY CAR SERVICE RULES

Upon further consideration of Revised Exemption No. 155 issued January 19, 1979.

It is ordered, That under authority vested in me by Car Service Rule 19, Revised Exemption No. 155 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to *expire February 2, 1979.*

This amendment shall become effective January 26, 1979.

Issued at Washington, D.C., January 25, 1979.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4188 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 3 under Service Order No. 1344]

MIDDLETOWN AND HUMMELSTOWN RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 3 (Middletown and Hummelstown Railroad Company), and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 3 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

NOTICES

• 7861

Issued at Washington, D.C., January 26, 1979.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4181 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 1 under
Service Order No. 1344]

NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C.
Order No. 1 (New York, Susquehanna
and Western Railroad Company), and
good cause appearing therefor:

It is ordered,

I.C.C. Order No. 1 is amended by
substituting the following paragraph
(g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall
expire at 11:59 p.m., April 30, 1979,
unless otherwise modified, changed or
suspended.

Effective date. This amendment

shall become effective at 11:59 p.m.,
January 31, 1979.

This amendment shall be served
upon the Association of American
Railroads, Car Service Division, as
agent of all railroads subscribing to
the car service and car hire agreement
under the terms of that agreement,
and upon the American Short Line
Railroad Association. A copy of the
amendment shall be filed with the Di-
rector, Office of the Federal Register.

Issued at Washington, D.C., January
30, 1979.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4183 Filed 2-6-79; 8:45 am]

[7035-01-M]

[Amendment No. 1 to I.C.C. Order No. 6
under Service Order No. 1344]

SOUTHERN PACIFIC TRANSPORTATION CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C.
Order No. 6 (Southern Pacific Trans-

portation Company), and good cause
appearing therefor:

It is ordered,

I.C.C. Order No. 6 is amended by
substituting the following paragraph
(g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall
expire at 11:59 p.m., July 31, 1979,
unless otherwise modified, changed or
suspended.

Effective date. This amendment
shall become effective at 11:59 p.m.,
January 31, 1979.

This amendment shall be served
upon the Association of American
Railroads, Car Service Division, as
agent of all railroads subscribing to
the car service and car hire agreement
under the terms of that agreement,
and upon the American Short Line
Railroad Association. A copy of the
amendment shall be filed with the Di-
rector, Office of the Federal Register.

Issued at Washington, D.C., January
26, 1979.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4182 Filed 2-6-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

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REVISED AGENDA¹

Items

1. Power Lawn Mowers.

The Commission will decide on a FEDERAL REGISTER document concerning a safety standard addressing blade-contact hazards associated with walk-behind power lawn mowers. The Commission determined at a January 25, 1979 meeting that it would not consider the standard promulgated until ten days after it is published in the FEDERAL REGISTER.

2. Briefing on Carcinogens.

The staff will present a status report on staff activities concerning carcinogens in consumer products.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Consumer Product Safety Commission, suite 300, 1111 18th Street, NW., Washington, D.C. 20207, 202-634-7700.

[S-251-79 Filed 2-5-79; 11:10 am]

[7590-01-M]

3

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

TIME AND DATE: Week of February 5, 1979 (changes).

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Tuesday, February 6: 1:30 p.m.

1. Tarapur discussion (approximately 1½ hours, closed—continued from Feb. 2, 1979) (exemption 1).

¹Agenda revised February 2, 1979, to add Item 2. The Commission determined that agency business requires adding this item to the agenda without seven days notice.

2. Discussion of personnel matter (approximately 1½ hours, postponed from Feb. 1, 1979) (closed—exemption 6).

Wednesday, February 7: 2:30 p.m. (approximately)

2. Discussion of proposed amendment to 10 CFR 73.55 to extend the implementation date for certain complementary and alternative measures for protection against insider threat (approximately 1½ hours, additional item) (public meeting).

On February 1, 1979, the Commission voted 4 to 0 (Chairman Hendrie not attending) pursuant to 5 U.S.C. 552b(3)(1) and §9.107(a) of the Commission's rules that Commission business requires that the above item be held on less than 1 week's notice to the public. Prompt discussion is required for this important item.

Thursday, February 8: 3 p.m. (approximately)

2. Continuation of briefing on NRC legislative proposal (approximately 1½ hours, public meeting).

(Replaces "Discussion of Personnel Matter" which is cancelled.)

ADDITIONAL INFORMATION: The "Briefing on Waste Management Program", scheduled February 1, 1979, was cancelled.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

[S-253-79 Filed 2-5-79; 1:41 pm]

[7600-01-M]

4

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 36854.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: February 8, 1979 at 9:30 a.m.

CHANGES IN THE MEETING: The meeting for February 8, 1979, has been rescheduled for 1 p.m.

[S-254-79 Filed 2-5-79; 3:42 pm]

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[6335-01-M]

1

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Wednesday, February 7, 1979, 5 p.m. e.s.t.

PLACE: Room 800, 1121 Vermont Avenue NW., Washington, D.C.

STATUS: Conference call meeting; open to public.

MATTERS TO BE CONSIDERED: 1. Review of Draft report: State of Civil Rights—1978.

FOR FURTHER INFORMATION CONTACT:

Loretta Ward, Public Affairs Unit, 202-254-6697.

[S-252-79 Filed 2-5-79; 11:13 am]

[6355-01-M]

2

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: Monday, February 5, 1979, 1:15 p.m.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C. 20207.

STATUS: Open.

MATTERS TO BE CONSIDERED: Open to the public.

WEDNESDAY, FEBRUARY 7, 1979

PART II



SECURITIES AND EXCHANGE COMMISSION

■

DISCLOSURE REQUIREMENTS

Forms

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6019, IC-10569, IA-6651]

DISCLOSURE OF BROKERAGE PLACEMENT PRACTICES BY CERTAIN REGISTERED INVESTMENT COMPANIES AND CERTAIN OTHER ISSUERS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and forms.

SUMMARY: The Commission is amending a rule and certain forms to require certain registered investment companies, and certain employee benefit plans and funds or accounts for assets of such plans, to make disclosures to investors about brokerage placement practices and policies. As part of the extensive 1975 amendments to the federal securities laws, investment managers were explicitly relieved, subject to conditions, of certain liabilities that might have accrued to them if they caused accounts which they manage to pay brokerage commissions at rates in excess of the lowest rates available in consideration of the value of the brokerage and research services provided by the broker to whom the commissions were paid. It has long been the position of the Commission that such brokerage placement practices, although permissible, should be disclosed to investors. The amendments to the rule and forms adopted by the Commission are designed to require certain registered investment companies and certain other issuers to provide investors with useful information which they might not otherwise receive about brokerage placement practices and policies. By separate release the Commission has announced the adoption of a new rule and registration form for investment advisers which incorporate similar narrative, but not statistical, disclosure requirements for certain registered investment advisers.

EFFECTIVE DATE: May 1, 1979. These amendments apply to registration statements and proxy statements subject to the amendments which are filed or amended on or after that date.

FOR FURTHER INFORMATION CONTACT:

Thomas D. Maher, Esq., Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 755-0214.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today adopted:

(1) Amendments to Forms N-1 [17 CFR 239.15 and 274.11] and N-2 [17 CFR 239.14 and 274.11a-1], integrated registration forms under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("Securities Act") and the Investment Company Act of 1940 [15 U.S.C. 80a et seq.] ("Investment Company Act");

(2) Amendments to Forms S-1 and S-8 [17 CFR 239.11 and 239.16b] under the Securities Act; and

(3) Amendments to Rule 20a-2 [17 CFR 270.20a-2] under the Investment Company Act.

These amendments require certain investment companies registered under the Investment Company Act and some other types of accounts (including certain H.R. 10 "Keogh" plans, employee benefit plans, and collective funds or separate accounts for the assets of such plans, interests or participations in which are registered under the Securities Act) to make disclosures to investors about brokerage placement practices and policies.

These disclosure requirements reflect a long-standing policy of the Commission that brokerage placement practices of investment managers may take into consideration research and brokerage services, provided, however, that such practices are disclosed to investors. The Commission's Policy Statement on the Future of the Securities Markets, February 1972, explained that the Commission believed that:

[T]he providing of investment research is a fundamental element of the brokerage functions for which the bona fide expenditure of the beneficiary's funds is completely appropriate, whether in the form of higher commissions or outright cash payments. *It should be disclosed to investors that their money manager is willing to exercise discretion, in seeking the best information available, and does not consider that there is an obligation to get the cheapest execution regardless of qualitative consideration. It should of course be expected that managers paying brokers for research with their beneficiaries' commissions or other funds would stand ready to demonstrate that such expenditures were bona fide.* (emphasis added) (at p. 11).¹

Thus, while the Commission's position has been that such brokerage placement practices may be fully consistent with an investment manager's fiduciary responsibilities and the requirements of the federal securities laws, it is necessary that they be adequately disclosed to investors.

On November 30, 1976, the Commission issued a notice (Securities Act Release No. 5772) [41 FR 53356, December 6, 1976] (the "1976 Release") pro-

¹ See also, Securities Act Release No. 5250 (May 9, 1972) [37 FR 9988, May 18, 1972].

posing to mandate disclosure of brokerage placement practices by registered investment advisers exercising investment discretion over client accounts ("investment managers"), pursuant to Section 28(e)(2) [15 U.S.C. 78bb(e)(2)] of the Securities Exchange Act of 1934 [15 U.S.C. 78 et seq.]. The proposal consisted of Rule 28e2-1 as well as certain related rule and registration form changes which incorporated Rule 28e2-1 by reference and required investment managers to disclose their brokerage placement practices and policies to clients, both individual and "pooled" entities. In addition, investment companies and certain other pooled entities were required to make prospectus and proxy disclosure of this information.

Simultaneously with the adoption of the amendments announced in this notice, the Commission adopted certain new and amended rules and forms under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.] ("Advisers Act"). Among these changes, which are announced in Investment Advisers Act Release No. 664 (January 30, 1979), are the adoption of revised Form ADV [17 CFR 279.1] and Rule 204-3 [17 CFR 275.204-3] (the "brochure rule") under the Advisers Act which requires that a brochure be delivered to certain clients and prospective clients of investment advisers.

Both Forms N-1 and N-2, as previously adopted,² and the brochure rule, as previously proposed, would have required disclosure relating to brokerage placement practices. This notice announces the revision of Items 7 and 9 in Forms N-1 and N-2, respectively, and the inclusion of comparable disclosure requirements, as proposed in the 1976 Release, in certain other pooled-fund prospectuses and an Investment Company Act proxy rule. Similar revisions have been made in the relevant portion of the brochure rule as previously proposed.³

In so doing, all of the substance of Rule 28e2-1 (as modified in light of

² Securities Act Release No. 5964 (August 28, 1978) [43 FR 39548, September 5, 1978]. In Securities Act Release No. 6014 (January 11, 1979) [44 FR 4466, January 22, 1979] the Commission announced that it had decided that no further changes should be made to the items in Forms N-1 and N-2 on which submission of additional comments by the public was invited in Securities Act Release No. 5964.

³ Advisers Act Release Nos. 601 and 602 (July 21, 1977) [42 FR 38316, 38319, July 27, 1977]. The brochure rule was originally proposed in Advisers Act Release No. 442 (March 5, 1975) [40 FR 11897, March 14, 1975]. As adopted, Item 11 of Part II of revised Form ADV requests certain narrative information about brokerage placement practices of certain investment advisers. Pursuant to Rule 204-3 under the Advisers Act, Part II of revised Form ADV, or the information contained in Part II, will be delivered to certain clients and prospective clients of investment advisers.

comments) has been adopted for pooled funds under the Commission's jurisdiction. Registered investment advisers who have brokerage placement discretion would be required to include in their brochure narrative information identical to that pooled entities will be required to disclose to shareholders. Statistical disclosure by such advisers, which would have been required by Rule 28e2-1, would not be required since the brochure is a document of general description. Requiring individual statistical disclosure by such advisers, on an account by account basis, can be a subject of future inquiry in conjunction with other individualized disclosures which may be relevant to advisory clients. The Commission believes that it is important to adopt these amended disclosure requirements at this time so that they may be incorporated on a timely basis in new Forms N-1 and N-2, which became effective for certain management investment companies on January 1, 1979, and into the new brochure rule.

The disclosure requirements reflect the better current disclosure by registered investment companies of brokerage placement practices. Thus, these requirements will serve to standardize such disclosure, not only among registered investment companies, but also among such investment companies and some other types of pooled accounts whose securities are registered under the Securities Act. Further, requiring registered investment advisers who exercise discretion over client accounts to make comparable narrative disclosure in their brochures also adjusts this disclosure requirement to that which the Commission now believes to be preferable.

It should be noted, however, that the amended rule and forms represent mandatory disclosure standards. More detailed or additional information and explanatory material could and should be provided where necessary, because of circumstances in particular cases, to ensure that all material information regarding brokerage placement practices and policies will be disclosed to investors.

BACKGROUND

Section 28(e),⁴ which was enacted as a part of the Securities Acts Amend-

⁴Section 28(e) provides that: (1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to the date of enactment of the Securities Acts Amendments in [sic] 1975 solely by reason of his having caused the account to pay a member of an exchange, broker, or

ments of 1975 [Pub. L. No. 94-29 (June 4, 1975)], resulted from the concern of investment managers and, to some extent, research oriented brokerage firms that in an environment of fully negotiated commission rates an investment manager would be subject to suit alleging breach of fiduciary duty if it effected securities transactions involving payment of commissions at rates in excess of the lowest rates available. Pursuant to Section 28(e)(1), investment managers, when acting in good faith, are relieved of certain liabilities that might have accrued to them if they caused accounts which they manage to pay brokerage commissions at rates in excess of the lowest rates available in consideration of the value of brokerage and research services provided by the broker to whom the commissions were paid. Under Section 28(e)(2) the Commission may adopt disclosure requirements concerning brokerage placement policies and practices for any person, other than a

dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract. Provided, however, that nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this title or otherwise.

(2) A person exercising investment discretion with respect to an account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) For purposes of this subsection a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

bank,⁵ who exercises investment discretion, as defined by Section 3(a)(35) [15 U.S.C. 78c(a)(35)] of the Exchange Act or by Commission rule.

In 1976, the Commission issued a proposed rulemaking (the 1976 Release) concerning the disclosure of brokerage placement practices by investment managers for which the Commission is the appropriate regulatory agency and as to whom the Commission would be able to effectively enforce such requirements.

MODIFICATIONS FROM THE 1976 RELEASE

CHANGES IN FORMAT AND SCOPE

The 1976 Release contemplated requiring registered investment advisers to deliver to clients over whose accounts they exercised investment discretion, as there defined, a document containing disclosures regarding brokerage placement practices specified in proposed Rule 28e2-1. While such disclosure is important, so too are many other matters relating to an investment adviser (his experience, methodology, etc.). In this connection, the Commission in 1975 and again in 1977 proposed a brochure rule which would have required investment advisers to provide their clients with comprehensive written disclosure statements, including some information regarding brokerage placement practices. The Commission has determined that the preferable approach is to eliminate the requirement for a separate disclosure document as proposed in the 1976 Release and to incorporate more comprehensive brokerage placement practice disclosure requirements into new Rule 204-3 and revised Form ADV under the Advisers Act. Only narrative disclosure would be required in the brochure, however, because individualized statistical disclosure as proposed in Rule 28e2-1 would not be compatible with a general disclosure document such as the brochure.⁶

Investment companies registered under the Investment Company Act and some other types of accounts (including Keogh Plans, other employee benefit plans, and collective funds or separate accounts for the assets of such plans, interests or participations

⁵Under Section 3(a)(34)(F) [15 U.S.C. 78c(a)(34)(F)] of the Exchange Act, the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation, rather than the Commission, have responsibility for adopting disclosure requirements with respect to banks subject to their jurisdiction and which exercise investment discretion for the account of others.

⁶The statistical information to be required of investment companies and certain other pooled entities is discussed subsequently, as is the Commission's determination not to require that such information be furnished to clients of investment managers at this time.

in which are registered under the Securities Act) are required to deliver prospectuses. Since a vehicle currently exists in which brokerage placement practices can be and, in many instances, are set forth, the Commission has determined that they should be set forth therein in accordance with uniform disclosure requirements.

While Forms N-1 and N-2, the integrated registration forms for investment companies, already include items requiring disclosure of brokerage allocation, the items as now revised are more attuned to current practices. It should be noted that comment was sought on certain items in Forms N-1 and N-2 as adopted, other than the brokerage allocation items, but no comments were received. Hence, the amendments being adopted will complete the current investment company forms revision effort.

Thus, the Commission has adopted revised disclosure requirements regarding brokerage placement practices self-contained in Forms N-1 and N-2, Rule 20a-2 under the Investment Company Act (a proxy rule), Forms S-1 and S-8 under the Securities Act, and in Part II of revised Form ADV under the Advisers Act.

CHANGES IN DISCLOSURE

In light of the comments received from the public, the Commission has made certain modifications from the 1976 Release's proposed rulemaking. As mentioned above, the information which generally has been retained represents matters which—to a greater or lesser degree—are frequently treated in existing investment company disclosure documents. However, the general quality of disclosure in this area is uneven and, with respect to investment advisers and pooled accounts which are not registered investment companies, insufficient, or non-existent. Essentially, the Commission has taken the investment company industry's better practices as the basis for the industry's required standards and for the standards to be required of investment managers. The Commission believes that the disclosure requirements it has adopted are more attuned to current brokerage allocation practices and in some cases will elicit disclosure more meaningful than that now being provided.

NARRATIVE INFORMATION TO BE DISCLOSED

Paragraph (d) of proposed Rule 28e2-1 would have required investment managers to provide: (1) A description of how brokers are selected to effect transactions for the managed account and how evaluations are made of the overall reasonableness of commissions paid; (2) a brief description of any research services which the invest-

ment manager obtains "in return for" brokerage commissions, the extent to which such research is obtained for the purpose of benefiting accounts generally or specific managed accounts of the investment manager and any other research services provided for the managed account; and (3) a brief description of certain other services and items of value received from brokers by the investment manager or affiliated persons of the investment manager and an estimate of their fair market value. Among the critical comments were:

That it is impractical to determine whether specific research was obtained "in return for" commissions. For example, commentators expressed doubt regarding the status of unsolicited and unused services, or services received from brokers to whom no commissions were ultimately paid. That it would result in lengthy lists of little benefit to investors. Commentators believed that the proposal could be read to require detailed lists of research services received, including materials received on an unsolicited basis or unused in the management of the account.

That it could restrict investment advisers' obtaining materials which would be useful to their managed account, but which had not been described in the appropriate prospectus.

That it would cause confusion concerning whether the disclosure of "other" services provided would include internally generated research.

That the requirement of disclosing any other "services or items of value" may result in lengthy disclosure not involving paying-up for research or brokerage services and therefore not within the scope of Section 28(e). Moreover, it may not be practicable to place a fair market value on these services or items.

And that it is infeasible to separate commissions into their research and brokerage services components. (This was in response to a request for comments on the feasibility and desirability of requiring disclosure of specific dollar amounts paid through brokerage commissions for research services as an alternative, or addition, to the proposed disclosure requirements.)

The Commission believes that these concerns are addressed adequately in the adopted amendments. These amendments require disclosing any factors, such as receiving research, involved in selecting brokers even if the investment manager would assert that he is not for that research service "paying-up." If the receipt of research services is a factor in selecting brokers, the nature of such research services has to be described. Additionally, the amendments require appropriate disclosure whenever the receipt of prod-

ucts or services other than brokerage or research services is a "factor" in the selection of brokers.⁷ Further, the amendments ask for a statement whether persons acting on the behalf of an account are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (1) brokerage or (2) research services provided by the broker. This will clarify whether investment managers have the authority to allocate client brokerage and pay a commission higher than the lowest rate obtainable.

Commentators on the 1976 Release also stated that a disclosure requirement of the extent to which research was or will be obtained to benefit specific or all accounts of an investment manager would be unreasonably complicated. They believed that such research frequently benefits many—or all—of the manager's accounts, but that it is impracticable to "allocate" specifically this benefit among those accounts. The Commission never intended that the investment manager formulate as percentages or dollar amounts the extent to which specific services benefit particular accounts and Section 28(e) clearly states that that it not relevant. To clarify this point, the Commission has decided to require that investment managers be required to explain, if applicable, that research services they obtain with an account's brokerage may be used by the investment manager in servicing all of its accounts and that not all such services may be used in connection with the account which paid commissions to a broker providing such services. Of course, if other policies or practices are applicable to the account with respect to the allocation of research services provided by brokers or the costs thereof, such policies and practices would be required to be explained.

The Commission understands that some pooled entities or their investment managers, pursuant to agreement or understanding with brokers or by internal allocation process, direct commissions to particular brokers because of research services that they provide. Where this situation exists, the Commission has decided to require that the amount of such transactions and the related commissions be disclosed in prospectuses and proxy state-

⁷These items could include, for example, office furniture, non-research oriented computer services, or kick-backs. See Exchange Act Release No. 12251 (March 24, 1976) [41 FR 13678, March 31, 1976]. The Commission would expect that, except where such items are nominally valued, receiving such products or services, even though not protected by Section 28(e), would be considered a factor in selecting brokers.

ments.⁸ Pursuant to the brochure rule, investment managers will be required to disclose to clients the existence of any such arrangements but not the amount of the transactions and related commissions.

STATISTICAL INFORMATION TO BE DISCLOSED

GENERAL

Paragraph (d)(4) of proposed Rule 28e2-1 would have required the following specific statistical information regarding brokerage commissions: (i) The total amount of brokerage commissions paid by the managed account expressed both as a dollar amount and as a percentage of the average net assets of the account (calculated on the basis of the same period as the advisory fee is calculated); (ii) the total dollar amount of such commissions paid to the investment manager or to brokers who are affiliated persons of the investment manager; and (iii) the average commission rate paid by the managed account (A) on all transactions involving the payment of commissions to any broker and (B) on all transactions involving the payment of commissions to the investment manager or brokers who are affiliated persons of the investment manager.

After considering the comments received in response to the 1976 Release, the Commission has made a substantial modification of the required statistical disclosure:

(1) The dollar amounts of brokerage commissions paid in each of the last three years in the aggregate and to each of certain brokers having specified relationships with the registrant or other named entities ("affiliated broker") are regularly disclosed by registered investment companies and such requirements have been retained. Also, as required in the 1976 Release, this information will have to be disclosed by certain other pooled entities.

(2) On the other hand, the Commission is not requiring that commissions as a percentage of average net assets be shown because it is a statistic that shareholders of registered investment companies and similar entities could, if interested, calculate using data already being disclosed. Moreover, such information would be largely a function of portfolio turnover.

(3) The Commission is sensitive to the concerns of investment managers that average commission rates would place an unintended premium on paying the lowest available commis-

sion rates without reference to the availability of brokerage or research services. An obligation to get the cheapest execution regardless of qualitative considerations has been rejected by the Commission and the Congress. The Commission accordingly has not required showing average commission rates.

(4) The amendments include a new item of statistical information, only for the most recent fiscal year, where an affiliated broker is used: the percentage of registrant's aggregate dollar amount of brokerage commissions paid to each such affiliate as well as the percentage of registrant's aggregate dollar amount of transactions involving the payment of commissions effected through each such affiliate. Where there is a material difference in the figures, the anomaly would have to be explained. Investors would learn whether an affiliate's compensation is on the average on a basis similar to that of other brokers used by the registrant, or, if the portion of compensation received is materially greater or less than the portion of transactions done, the reasons therefor.

The specific statistical information that would be required in the annual proxy statements of registered investment companies as well as in their prospectuses and in prospectuses of employee benefit plans, funds and accounts subject to the amended rules would not, at this time, be required of investment managers in the brochure rule or revised Form ADV. The inclusion of statistical information regarding specific clients would be inappropriate in a general disclosure document which will be available to all advisory clients. Moreover, many commentators on the 1976 Release believed that annually computing statistical information on an account by account basis and supplying it to clients would result in significant additional costs to investment managers, particularly small investment managers who would have to make such computations manually.

Were statistical data required to be delivered to accounts discretionarily managed, it would require that a separate disclosure document be prepared for each account.⁹ Whether this should be required at all has been questioned. Many advisory clients receive confirmations from brokers from which they themselves could compute the required information, and, in many cases, such information is available to investment advisory clients on request.¹⁰ The Commission will contin-

ue to assess the need for periodic statistical disclosure in this area. It believes, however, that this should be a part of a more general inquiry as to what types of information should be disclosed to clients on an individualized basis.

AFFILIATED BROKERS

In the 1976 Release, the Commission specifically invited comments on the desirability of substantive limitations on the payment of more than normal charges for execution alone to a broker affiliated with the investment manager in return for research services, and what, if any, additional disclosures would be appropriate with respect to such practices. Some commentators simply opposed any rule against paying up to affiliates on grounds that there was no history of abuses indicating the need for such a rule. Other commentators believed that paying up to affiliates should be prohibited, and noted that money managers using affiliated brokers had traditionally eschewed any such practice. The Commission is of the view that if an account were to be charged with brokerage commissions paid to an affiliate which reflect more than normal charges for execution alone, the investment manager would be under a heavy burden to show that such payments were appropriate.

CERTAIN FINDINGS

The amendments to Rule 20a-2 and Forms N-1, N-2, S-1 and S-8, and Item 11 of Part II of revised Form ADV under the Advisers Act which the Commission has adopted in a simultaneous action, are adopted pursuant, in part, to the authority of Sections 3(a)(35)(C) and 28(e)(2) of the Exchange Act. The Commission is required by Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)] to consider the impact that the amendments adopted herein would have on competition. In view of the fact that similar narrative disclosure is to be required of investment advisers and investment companies and certain other pooled entities, the Commission has concluded that these amendments impose no significant burden on competition among persons subject to the Commission's jurisdiction. Under Sections 28(e)(2), 23(a)(1) [15 U.S.C. 78w(a)(1)], and 3(a)(34)(F) of the Exchange Act, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation are granted the authority to require by rule the disclosure of brokerage placement practices of institutional investment managers which are banks subject to the authority of those agencies. The Commission has informed those agencies of its intend-

⁸This requirement reflects the Commission's understanding that brokerage services have not "unbundled" generally. An investment entity may not "pay-up" in this sense for research, but, rather, may allocate his brokerage business (to be effected at the prevailing rate) according to the research services provided.

⁹Under the Advisers Act and rules thereunder, only advisers who have custody or possession of clients' funds or securities have been required to furnish individualized reports to clients.

¹⁰The brochure rule requires disclosure of the investment manager's relationship with any broker-dealer.

ed actions and stands ready to consult with them with a view to their requiring corresponding disclosure by those persons regulated by them who exercise investment discretion. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of these amendments to investors.

COMMISSION ACTION

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

I. Parts 239 and 274 of Chapter II of Title 17 of the Code of Federal Regulations are amended as follows:

1. By revising Item 7, Part I, of Form N-1 to read as follows:

§ 239.15 Form N-1, for open-end managed investment companies registered on Form N-8A.

§ 274.11 Form N-1, registration statement of open-end management investment companies.

* * *

Item 7. Brokerage Allocation

(a) State for the period indicated:

(1) The aggregate dollar amount of brokerage commissions paid by the Registrant during the three most recent fiscal years;

(2)(i) The aggregate dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker (A) which is an affiliated person of the Registrant, (B) which is an affiliated person of such person or (C) an affiliated person of which is an affiliated person of the Registrant, its investment adviser or principal underwriter, and the identity of each such broker and the relationships that cause the broker to be included in the statement; (ii) the percentage of Registrant's aggregate brokerage commissions paid to each such broker during the most recent fiscal year; (iii) the percentage of Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through each such broker during the most recent fiscal year; and (iv) when there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any such broker, the reasons therefor.

(b) Describe how brokers will be selected to effect securities transactions for Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered in these determinations.

Instructions. 1. If the receipt of products or services other than brokerage or research services is such a factor, this description should specify them.

2. If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services. 213. State whether persons acting on behalf of Registrant are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (a) brokerage or (b) research services provided by the broker.

(c) If applicable, explain that research services furnished by brokers through whom Registrant effects securities transactions may be used by Registrant's investment adviser in servicing all of its accounts, and that not all such services may be used by the investment adviser in connection with Registrant; or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers, explain such policies and practices.

(d) If, during the last fiscal year, Registrant or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker or brokers because of research services provided, state the amount of such transactions and related commissions.

2. By revising Item 9, Part I, of Form N-2 to read as follows:

§ 239.14 Form N-2, for closed-end management investment companies registered on Form N-8A.

§ 274.11a-1 Form N-2, registration statement of closed-end management investment companies.

* * *

Item 9. Broker Allocation

(a) State for the period indicated:

(1) The aggregate dollar amount of brokerage commissions paid by the Registrant during the three most recent fiscal years;

(2)(i) The aggregate dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker (A) which is an affiliated person of the Registrant, (B) which is an affiliated person of such person or (C) an affiliated person of which is an affiliated person of the Registrant, its investment adviser or principal underwriter, and the identity of each such broker and the relationships that cause the broker to be included in the statement; (ii) the percentage of Registrant's aggregate brokerage commissions paid to each such broker during the most recent fiscal year; (iii) the percentage of Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through each such broker during the most recent fiscal year; and (iv) when there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any such broker, the reasons therefor.

(b) Describe how brokers will be selected to effect securities transactions for Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered in these determinations.

Instructions. 1. If the receipt of products or services other than brokerage or research services is such a factor, this description should specify them.

2. If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services.

3. State whether persons acting on behalf of Registrant are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (a) brokerage or (b) research services provided by the broker.

(c) If applicable, explain that research services furnished by brokers through whom Registrant effects securities transactions may be used by Registrant's investment adviser in servicing all of its accounts, and that not all such services may be used by the investment adviser in connection with Registrant; or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers, explain such policies and practices.

(b) If, during the last fiscal year, Registrant or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker or brokers because of research services provided, state the amount of such transactions and related commissions.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

II. Part 239 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By amending § 239.11 by adding the following new Item 20, Part I, and renumbering current Items 20 through 29 in Part II:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

* * *

Item 20. Brokerage Allocation

If the securities being registered represent interests or participations in any single or collective fund, trust or separate account ("Registrant") issued in connection with an employees' stock bonus, pension, profit-sharing or annuity plan:

(a) State for the period indicated:

(1) The aggregate dollar amount of brokerage commissions paid by the Registrant during the three most recent fiscal years;

(2)(i) The aggregate dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker (A) which is an affiliated person of the Registrant, (B) which is an affiliated person of such person or (C) an affiliated person of which is an affiliated person of the Registrant, its investment adviser or principal underwriter, and the identity of each such broker and the relationships that cause the broker to be included in the statement; (ii) the percentage of Registrant's aggregate brokerage commissions paid to each such broker during the most recent fiscal year; (iii) the percentage of

Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through each such broker during the most recent fiscal year; and (iv) when there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any such broker, the reasons therefor;

Instruction. For the purpose of this Item, "affiliated person," "principal underwriter," and "investment adviser" shall have the same meaning as in the Investment Company Act of 1940. These definitions shall be read as if the Registrant were an investment company within the meaning of that Act.

(b) Describe how brokers will be selected to effect securities transactions for Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered in these determinations.

Instructions. 1. If the receipt of products or services other than brokerage or research services is such a factor, this description should specify them.

2. If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services.

3. State whether persons acting on behalf of Registrant are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transactions, in recognition of the value of (a) brokerage or (b) research services provided by the broker.

(c) If applicable, explain that research services furnished by brokers through whom Registrant effects securities transactions may be used by Registrant's investment manager in servicing all of its accounts, and that not all such services may be used by the investment manager in connection with Registrant, or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers, explain such policies and practices.

(d) If, during the last fiscal year, Registrant or its investment manager, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker or brokers because of research services provided, state the amount of such transactions and related commissions.

2. By amending § 239.16b by adding a new paragraph (d) to Item 9, Part I, as follows:

§ 239.16b. Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

Item 9. Investment of Funds.

(d) If a substantial part of the assets of the plan is invested in securities other than those of the employer, its parents or subsidiaries, state:

(1) The aggregate dollar amount of brokerage commissions paid by the plan during the three most recent fiscal years;

(2)(i) The aggregate dollar amount, if any, of brokerage commissions paid by the plan during the three most recent fiscal years to any broker (A) which is an affiliated person of the plan, (B) which is an affiliated person

of such person or (C) an affiliated person of which is an affiliated person of the plan, or its investment adviser or principal underwriter, and the identity of each such broker and the relationships that cause the broker to be included in the statement;

(ii) the percentage of plan's aggregate brokerage commissions paid to each such broker during the most recent fiscal year; (iii) the percentage of plan's aggregate dollar amount of transactions involving the payment of commissions effected through each such broker during the most recent fiscal year; and (iv) when there is a material difference in the percentage of brokerage commissions paid to, and the percentage of brokerage transactions effected through, any such broker, the reasons therefor.

Instruction. For the purpose of this Item, "affiliated person," "principal underwriter" and "investment adviser" shall have the same meaning as in the Investment Company Act of 1940. These definitions shall be read as if the plan were an investment company within the meaning of that Act.

(3) Describe how brokers will be selected to effect securities transactions for the plan and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered in these determinations.

Instructions. 1. If the receipt of products or services other than brokerage or research services is such a factor, this description should specify them.

2. If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services.

3. State whether persons acting on behalf of the plan are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (a) brokerage or (b) research services provided by the broker.

(4) If applicable, explain that research services furnished by brokers through whom the plan effects securities transactions may be used by the plan's investment manager in servicing all of its accounts, and that not all such services may be used by such investment adviser in connection with the plan; or, if other policies or practices are applicable to the plan with respect to the allocation of research services provided by brokers, explain such policies and practices.

(5) If, during the last fiscal year, the plan or its investment manager, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed the plan's brokerage transactions to a broker or brokers because of research services provided, state the amount of such transactions and related commissions.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

III. Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by revising paragraph (a)(7) of § 270.20a-2 as follows:

§ 270.20a-2 Information pertaining to investment adviser and investment advisory contract.

(a) * * *

(7)(i) State the aggregate dollar amount of commissions paid by the investment company during its last fiscal year;

(ii) State the aggregate dollar amount, if any, of brokerage commissions paid by the investment company during the last fiscal year to any broker (A) which is an affiliated person of the investment company, (B) which is an affiliated person of such person or (C) an affiliated person of which is an affiliated person of the investment company, or its investment adviser or principal underwriter, and the identity of such broker and the relationships that cause the broker to be included in the statement;

(iii) State the percentage of the investment company's aggregate brokerage commissions paid to each such broker during the most recent fiscal year;

(iv) State the percentage of the investment company's aggregate dollar amount of transactions involving the payment of commissions effected through each such broker during the most recent fiscal year;

(v) Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any such broker, state the reasons therefor.

(vi) Describe how brokers will be selected to effect securities transactions for the investment company and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered in these determinations. (If the receipt of products or services other than brokerage or research services is such a factor, this description should specify them. If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services. State whether persons acting on behalf of the investment company are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (A) brokerage or (B) research services provided by the broker.)

(vii) If applicable, explain that research services furnished by brokers through whom the investment company effects securities transactions may be used by the investment company's investment adviser in servicing all of its accounts, and that not all such services may be used by the investment adviser in connection with the investment company; or, if other policies or practices are applicable to the investment company with respect to the allocation of research services provided by brokers, explain such policies and practices.

(viii) If, during the last fiscal year, the investment company or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed the investment company's brokerage transactions to a broker or brokers because of research services provided, state the amount of such transactions and related commissions.

The foregoing amendments to Forms N-1 and N-2 under the Securities Act and the Investment Company Act, Forms S-1 and S-8 under the Securities Act, Rule 20a-2 under the Investment Company Act, and Item 11 of Part II of revised Form ADV under the Advisers Act, which the Commission has adopted in a simultaneous action, are adopted pursuant to the authority granted to the Commission in Sections 10 (c) and (d) and 19(a) [15 U.S.C. 77j (c), (d) and 77s(a)] of the Securities Act, Sections 8(b), 20(a) and 38(a) [15 U.S.C. 80a-8(b), 20(a) and 80a-37(a)] of the Investment Company Act, and Sections 3(a)(35)(C), 23(a) and 28(e)(2) [15 U.S.C. 78c(a)(35)(C), 78w(a) and 78bb(e)(2)] of the Exchange Act.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 30, 1979.

[FR Doc. 79-3905 Filed 2-6-79; 8:45 am]

[8010-01-M]

[Release Nos. IA-664, 34-15541; File No. 7121]

INVESTMENT ADVISER REQUIREMENTS CONCERNING DISCLOSURE, RECORDKEEPING, APPLICATIONS FOR REGISTRATION AND ANNUAL FILINGS

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final rules and forms.

SUMMARY: The Commission is (1) adopting a new disclosure rule under the Investment Advisers Act of 1940 (the "Act"); (2) amending two other rules under the Act relating to recordkeeping and when to amend the investment adviser registration form; (3) adopting a new annual report form for investment advisers; (4) revising the registration form for investment advisers; and (5) revising certain schedules used by investment advisers and broker-dealers in connection with the respective registration forms for such persons.

The new disclosure rule requires certain investment advisers to furnish to their existing and prospective advisory clients a written disclosure statement containing certain specified information regarding the background and business practices of such investment advisers. This disclosure requirement reflects the long-standing concern of the Commission as to the adequacy of information provided to clients of investment advisers regarding the background of such advisers and represents the culmination of several years of study and review by the Commission of the investment adviser disclosure area.

The revisions to the registration form expand the information previously required by the form and, in part, reflect certain amendments to the Act made in 1975.

The adoption and revision of the foregoing rules, as well as the revisions to the investment adviser registration form and adoption of the new investment adviser annual report form, should improve the efficiency and effectiveness of the Commission's program of investment adviser regulation.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Eric Thompson, Special Counsel (202-755-3507), or John K. Evans, III (202-755-0214), Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is taking the following action:

(1) Adopting Rule 204-3 (the "brochure rule") [17 CFR 275.204-3] under the Investment Advisers Act of 1940 (the "Act") [15 U.S.C. 80b-1 et seq.] which requires (a) investment advisers registered, or required to be registered under the Act, to deliver to clients prior to entering into an advisory contract, other than a contract with a registered investment company or relating solely to the provision of impersonal advisory services, a written disclosure statement containing certain specified information concerning the background and business practices of such advisers, (b) investment advisers registered, or required to be registered under the Act, annually to deliver or to offer in writing to deliver without charge a written disclosure statement to clients other than registered investment companies or those receiving solely impersonal advisory services under a contract requiring the payment of less than \$200, and (c) investment advisers, registered or required to be registered under the Act, to deliver or offer in writing to deliver a

written disclosure statement at the time of entrance into a contract providing for impersonal advisory services at a cost of \$200 or more;

(2) Amending Rule 204-2 [17 CFR 275.204-2] under the Act by adding new paragraph (a)(14) thereunder to require that investment advisers maintain as part of their books and records the written disclosure statement delivered to clients under the brochure rule;

(3) Revising Form ADV [17 CFR 279.1] to include (a) in new Part I of the revised form certain information authorized by the Securities Act Amendments of 1975 [Pub. L. No. 94-29 (June 4, 1975)] (the "1975 Amendments"), and certain additional information concerning investment advisers; and (b) in new Part II of the revised form the information required to be contained in the written disclosure statement;

(4) Revising Schedules A-D of Form ADV [17 CFR 279.1] and Form BD [17 CFR 249.501] under the Securities Exchange Act of 1934 [15 U.S.C. 78 et seq.] (the "Exchange Act") to make identical the schedules used by registered investment advisers who are also registered as broker-dealers under the Exchange Act, as well as revising Schedules E-G of Form ADV;

(5) Amending Rule 204-1 [17 CFR 275.204-1] under the Act to require a registered investment adviser (a) to amend Form ADV on the following basis: (i) promptly with respect to those items in Part I essential to the Commission's regulation of investment advisers; (ii) promptly after a material change with respect to certain other items, including most items in Part II; and (iii) annually with respect to certain items relating to advisory business in Part I and Item 13 in Part II and with respect to nonmaterial changes in certain other items in Part I and the balance of Part II, and (b) to file annually with the Commission new Form ADV-S disclosing whether such investment advisers are still engaged in the advisory business and enclosing with such form copies of all written disclosure statement (other than those in the form of Part II of Form ADV) delivered or offered to be delivered by investment advisers during the preceding fiscal year.

I. PURPOSE AND BACKGROUND

The Commission is adopting new and revised requirements for investment advisers under the Act with respect to disclosure, recordkeeping, registration form and schedules, and annual filings. The purpose of these requirements is:

(1) to provide existing and potential clients of investment advisers with relevant information concerning the background and business practices of

investment advisers that should be useful in the selection or retention of an investment adviser;

(2) to provide the Commission with information concerning the basic characteristics of the advisory industry that should be useful in facilitating the Commission's efforts to improve its regulatory effort regarding investment advisers;

(3) to provide the Commission with information concerning specific investment advisers that should assist the regional offices of the Commission in their inspections of investment advisers; and

(4) to implement authority granted to the Commission by the 1975 Amendments regarding the application for registration for investment advisers.

The requirements adopted by the Commission are based on proposals published for public comment in July 1977 (the "July 1977 Releases") regarding investment advisers.¹ These proposals were, in turn, based upon an earlier Commission initiative, in March 1975, to develop a more effective and efficient regulatory scheme for investment advisers.² Such efforts by the Commission were an outgrowth of one of the recommendations made in the January 1973 report of the Commission's Advisory Committee on Investment Management Services for Individual Investors, entitled "Small Account Investment Management Services, Recommendations for Clearer Guidelines and Policies." That Committee recommended that the firms they studied (those offering a small account management service) be required to furnish to prospective clients, in writing, certain specified information regarding the background of the investment adviser.

The Commission has considered the public comments received in response to the 1977 Releases and has made certain modifications in the rules and forms as proposed in response to those comments.

II. BROCHURE RULE

As a general matter, Rule 204-3 requires investment advisers when entering into an advisory contract, other than a contract with a registered investment company or providing for solely impersonal advisory services, to deliver to their clients and prospective clients a written disclosure statement containing information concerning their background and business practices. The rule also requires such investment advisers, on an annual basis, to deliver or to offer in writing to de-

liver to existing clients similar information without charge. The information required to be disclosed by the brochure rule is included as Part II of the revised registration form for investment advisers, Form ADV. To comply with the brochure rule, an investment adviser may either deliver Part II of Form ADV or deliver another document containing at least the information required by Part II of Form ADV.

The provisions of the brochure rule and issues associated with each provision are discussed below.

A. General Requirement. The brochure rule, in paragraph (a), imposes a disclosure requirement on investment advisers with respect to their current and prospective advisory clients, unless otherwise provided. Exemptions from this requirement are discussed in the following section.

The brochure rule permits the required disclosure to be made by an adviser in one of two ways. The adviser may use new Part II of Form ADV as the written disclosure statement. Alternatively, an adviser may use a written document containing at least the information required by Part II of Form ADV.

The use of a new Part II of Form ADV reflects a change in the rule as repropoed in the July 1977 Releases. Although the rule as repropoed would have provided for the delivery of alternative documents, a document containing specified information or the Form ADV, that proposal did not separate the information to be disclosed into distinct parts of the Form ADV.

Commentators generally agreed with the Commission's proposed use of the Form ADV as an alternative disclosure document. They were pleased that the Commission was sensitive to the cost of compliance for advisers who do not advertise extensively or who do not want to use a brochure as an advertising medium. Those commentators, however, expressed concern about the use of the entire Form ADV as the disclosure document. In their view, the revised Form ADV contained information which, although relevant for registration purposes, was extraneous to an existing client's retention or a prospective client's selection of an adviser.

The Commission agrees with the thrust of those comments. Accordingly, the revised Form ADV has been reorganized into two parts. Part I contains the information required in the current Form ADV and other information about investment advisers that will be useful to the Commission in its efforts to provide more effective and efficient regulation of investment advisers. Part II contains the information to be furnished to current and prospective clients. Advisers can pro-

vide copies of Part II if they do not want to use a separate written disclosure statement.

The information contained in such a separate written disclosure statement need not follow the same format of Part II of Form ADV. It is sufficient if the written statement contains a fair presentation of the information so required. It is, however, the responsibility of advisers to prepare these written statements in a meaningful and fair fashion. The Commission encourages advisers to set out this important information in a readable and informative manner.

B. Delivery. Pursuant to paragraph (b) of Rule 204-3, investment advisers must deliver a written disclosure statement to prospective clients when entering into an advisory contract. Advisers must deliver a brochure to current clients only when those clients enter into a substantially revised advisory contract. The delivery requirement does not apply to a contract with a registered investment company or providing solely for impersonal advisory services.

The initial delivery requirement reflects a modification in the repropoed made in the July 1977 Releases. As repropoed, the rule would have required advisers to furnish clients with a brochure 48 hours prior to entering into an advisory contract. The repropoed included an alternative right of subsequent rescission only with respect to contracts for impersonal advisory services. Providers of impersonal advisory services could have furnished a brochure not later than 30 days after entering into an advisory contract if the contract provided for rescission without penalty within five business days after the client received the brochure.

Several commentators agreed with the concept of a prior delivery requirement. Other commentators, however, while not disagreeing with the principle underlying the requirement, expressed concern that a 48-hour mandatory delivery requirement would unnecessarily disrupt usual and customary business practices of all types of investment advisers. As an alternative to the 48-hour requirement, some suggested that clients have the right to terminate the contract without penalty for a specified period of time after delivery of the brochure.

Although a prior delivery requirement might possibly offer greater protection to clients, a right to terminate the advisory contract should provide sufficient protection without unnecessarily disrupting legitimate business practices. Accordingly, the brochure rule provides that advisers have the option of satisfying the delivery requirement by delivering the brochure to the client (1) at least 48 hours prior

¹Advisers' Act Release Nos. 601 and 602 (July 21, 1977) [42 FR 38316, 38319, July 27, 1977].

²Advisers' Act Release No. 442 (March 5, 1975) [40 FR 11897, March 14, 1975].

to entering into an advisory contract or (2) at the time of entering into an advisory contract which provides for a right of termination without penalty within five business days after entering the contract.

Advisers entering into an advisory contract with a registered investment company or providing solely for impersonal advisory services are exempt from the initial delivery requirement. The exemption for investment companies was also contained in the rule as repropoed in the July 1977 Releases and is based upon the safeguards provided by Section 15(c) of the investment Company Act of 1940 (the "1940 Act") [15 U.S.C. 80a-1 et seq.]. That section requires an adviser to furnish information to the board of directors of a registered investment company to enable such board to evaluate the terms of the proposed advisory contract. Under these circumstances, it appears unnecessary to require the adviser to deliver a brochure to the investment company.

The exemption for contracts relating to the provision of impersonal advisory services substantially changes the rule as repropoed in the July 1977 Releases. As repropoed, advisers providing impersonal advisory services would have been required to deliver a brochure to prospective clients. Only one-time trial subscriptions to periodic publications costing no more than \$50 and for no more than three months were exempted.

A substantial number of commentators criticized the repropoal as not adequately distinguishing between providers of impersonal advisory services, primarily publishers of market letters, and those investment advisers who actually manage client accounts. The commentators suggested that the costs incurred by the providers of impersonal advisory services in complying with the rule would be prohibitive and would have the effect of discouraging new entrants into the impersonal advisory business.

Considering these comments, the Commission has exempted contracts for the provision of impersonal advisory services, as defined in the brochure rule, from the initial delivery requirement. In certain cases, however, these advisers must deliver or offer in writing to deliver a brochure to clients receiving impersonal advisory services, as discussed in the following section.

The Commission did not adopt the suggestion of several commentators that the brochure rule include an exemption for advisers who provide advisory services to large account clients. Commentators supporting an exemption for large account clients generally maintained that such clients are financially sophisticated and would not entrust their money to anyone without

adequate prior investigation, including in most cases a personal interview. Under those circumstances, it was contended, a written disclosure statement is unnecessary.

It is not at all certain, however, that large account clients necessarily have sufficient financial acumen to obviate the need for the protections afforded other advisory clients. Although Rule 146 [17 CFR 230.146] under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] generally provides an exemption from such Act's registration requirements for offerings to persons who are "able to bear the economic risk of the investment," the terms of the exemption are strictly limited. The manner of offering, nature of the offerees, number of purchasers and provision of access to information are all regulated by Rule 146. In contrast, in the absence of the brochure rule, there would be no statutory provisions, other than the Act's general antifraud provisions, which would regulate the information which must be provided to large account clients. Finally, the cost burden of providing large account clients with the disclosure statement appears to be relatively small.

The brochure rule also does not include an exemption for small advisers, as suggested by some commentators. Arguing that compliance with the brochure rule would be extremely time-consuming and costly for the small adviser, these commentators suggested a number of possible cut-offs based on the number of clients, the size of accounts managed, the number of employees, or whether the adviser has discretionary authority or custody of his clients' funds or securities.

Clients of small advisers are as entitled to full disclosure as clients of larger advisers. While the Commission recognizes that small advisers may incur additional time and expense in complying with the brochure rule, it is convinced that the benefits afforded advisory clients far outweigh any increased cost burdens to such advisers.

C. Offer to Deliver. The brochure rule, in paragraph (c), requires advisers annually to deliver or to offer in writing to deliver without charge to each of their clients a written disclosure statement meeting the requirements of the brochure rule.³ Advisers are also required to deliver or to offer in writing to deliver a brochure, without charge, to clients receiving impersonal advisory services under contracts requiring payment of \$200 or more when entering into an advisory contract and annually thereafter. The

³This requirement is satisfied if once every twelve months an adviser makes such a delivery or an offer to deliver to his clients. It does not require a separate timing determination for each client.

offer to deliver requirement does not apply to contracts with a registered investment company or for the provision only of impersonal advisory services at a cost of less than \$200.

This is a substantial departure from the rule as repropoed in the July 1977 Releases. As repropoed, the rule would have required advisers to deliver a revised disclosure statement to each of their clients within 45 days of a material change in the information contained therein. The rule also would have required advisers to deliver a revised statement to clients prior to renewing or extending an existing advisory contract and to prospective clients when entering into a new contract in the event that such renewal, extension or entrance into a new contract occurred during the 45 day period.

Commentators expressed concern about the cost associated with providing to advisory clients revised brochures and requested clearer guidance from the Commission with respect to the concept of "materiality," suggesting that the updating requirement be related to specific questions, rather than to materiality.

Under the brochure rule, all providers of impersonal advisory services for which the client is charged \$200 or more must offer to deliver without charge a current brochure to prospective clients at the time of entering into a contract, and similarly offer a current brochure to existing clients annually. Brochures requested in writing pursuant to such an offer must be delivered within seven days of receipt of the request. Advisers need not make such an offer to clients receiving only impersonal advisory services under contracts requiring payment of less than \$200 or to registered investment company clients.

The brochure as delivered by the adviser must be amended to correct inaccuracies pursuant to revised Rule 204-1 regarding amendments to applications for registration. As discussed in Section IV below in more detail, Rule 204-1 requires, *inter alia*, that the adviser "promptly" file an amendment correcting any material inaccuracy with respect to any question in Part II except question 13. The information required by question 13, i.e., an annual audited balance sheet from advisers who have custody of client funds or securities or who receive pre-paid advisory fees six months or more in advance and in excess of \$500, must be filed within 90 days after the end of the adviser's fiscal year.

Therefore, a brochure as delivered upon entry into the advisory contract, and upon request annually, must be current as required by Rule 204-1. The brochure rule does not specifically require advisers to furnish a revised doc-

ument to each of their clients every time a material change occurs, since this obligation is within the adviser's general fiduciary duty to his clients. In addition to the formal requirements outlined in the adopted and revised rules, advisers still have a fiduciary duty under Section 206 of the Act to disclose to clients major changes which would particularly affect the investment advisory relationship. For example, although the revised Form ADV requires advisers to file a new balance sheet within 90 days after the close of their fiscal years, where significant changes (such as insolvency) in financial condition occur, advisers then have a fiduciary duty to advise their clients immediately of such changes.

D. Omission of Inapplicable Information. The brochure rule, in paragraph (d), permits advisers to refrain from providing to a client or prospective client information that does not relate to the type of advisory service the adviser provides or intends to provide to such client or prospective client.

E. Other Disclosures. The disclosures required by the brochure rule are only minimum disclosure requirements. Paragraph (e) of the rule removes any inference that the brochure rule is intended to be a "safe-harbor" from other applicable disclosure requirements. It states that nothing in the brochure rule shall relieve advisers from any other obligation pursuant to any provision of the Act, or the rules and regulations thereunder, or other federal or state law to disclose any information to their clients or prospective clients not specifically required by such rule.

III. REVISIONS OF FORM ADV

Form ADV has been revised by changing the information required therein and by reorganizing such form into Parts I and II. Schedules A-G of Form ADV have also been revised. The revisions in Part I of Form ADV generally are intended (1) to reflect statutory changes made by the 1975 Amendments and (2) to obtain information about the basic characteristics of the advisory industry, particularly information which would allow the Commission's investment adviser inspection program to operate more effectively. The revisions in Part II of Form ADV solicit information concerning the background and business practices of investment advisers. The revisions to Schedules A-D of Form ADV and Form BD under the Exchange Act will make those schedules identical for registered investment advisers who are also registered as broker-dealers. Revised Schedule E and new Schedules F and G provide space for supplementary information

for Parts I and II of Form ADV and a balance sheet. Certain of these revisions are discussed below.

A. Part I of Form ADV. 1. Execution Clause. As repropoed in the July 1977 Releases, the execution portion of the Form ADV required a notarized signature. This requirement has been deleted.

2. Persons authorized to receive compliance and information communications. Item 2(c) of Form ADV, as repropoed, asked for the name and address of the person authorized to receive compliance and information communications. Several commentators suggested that such a requirement was an unauthorized attempt on the Commission's part to require all investment advisers to have compliance officers. This was not the Commission's intention. Moreover, inasmuch as the form already requests the name, address and telephone number of the applicant and the person from whom additional information about the form can be obtained, it appears unnecessary to require the name of an additional contact person, particularly a person who has no specific statutory responsibilities under the Act. Therefore, item 2(c) has been deleted.

3. State registration. Item 3, which seeks information concerning the states in which an investment adviser is registered, has been revised to require the adviser to provide an explanation if his registration in any state has been involuntarily terminated.

4. Mergers and successors. Item 7 provides information concerning mergers with, and successors to, investment advisers. Several commentators found the language in items 7 (a) and (b) confusing. Therefore, the language of item 7(a) has been simplified. Also item 7(b), which concerns mergers, has been limited to those which have occurred during the previous ten years. This is to prevent lengthy descriptions of the adviser's genealogy which would have no relevance to the decision to grant or deny registration.

5. Statutory disqualification. The 1975 Amendments amended Section 203(e) of the Act to expand the enumerated grounds which can serve as a basis for a denial of an application for registration or the revocation of the registration of an investment adviser. Therefore, revised Form ADV contains questions pertaining to such grounds.

With respect to the questions in item 10 concerning statutory disqualifications, several commentators suggested that the time period for all questions be limited to 10 years. This is not possible since the Act specifies varying time periods for each basis for denial or revocation.

Items 10 (a) and (d) have been revised to conform with the corresponding items on form BD. A question at

the end of item 10(f), as repropoed, concerning censures or fines by self-regulatory organizations has been deleted.

Several commentators pointed out that an affirmative answer to item 10(k) and the required explanation could result in what were private proceedings against an individual becoming public. Particularly in light of an applicant's obligation to promptly amend his registration if an answer to a question concerning statutory disqualifications changes, the question has been limited to public proceedings.

6. Civil litigation. Item 14 asks about civil litigation relating to an adviser's business. Several commentators suggested that requiring all litigation to be disclosed in a publicly available document would give a meritless claim a nuisance value which might induce an adviser to attempt to settle the matter. Since this was not an intended effect of this question, the question has been placed into Part I of the form so that it will not be required to be routinely provided to clients by investment advisers. This item was also modified to require only that material litigation be disclosed if the applicant is a defendant in the litigation.

7. Characteristics of advisers. Items 12(c), 13(a), 15 and 16 of Part I of Form ADV as revised are the items designed to provide information about the basic characteristics of investment advisers. We believe such questions will be useful (1) in structuring the Commission's investment adviser regulatory program on an overall basis and (2) in assisting the regional offices in selecting investment advisers for examinations. Some commentators criticized the questions on the ground that they were inappropriate material for a registration form. They suggested that such questions should be in a Commission questionnaire or survey. In addition, other commentators were concerned that inclusion of these questions would limit the form's utility as a disclosure document and would result in proprietary information becoming readily available to the public.

However, the information which would be derived from a one-time questionnaire would become out-of-date. Requiring the information on Form ADV, combined with the annual updating of information which will be part of Form ADV-S, should ensure that the Commission has this valuable information on a current basis.

In order that an existing or prospective client not be distracted by this information, we have moved these questions into Part I of Form ADV. Several specific changes in the content of these questions have also been made.

8. Balance sheet. The 1975 Amendments added Section 203(c)(1)(D) [15 U.S.C. 80b-3(c)(1)(D)] which permits

the Commission to require in Form ADV "a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified) * * *."

Consistent with this authority, advisers who are not required to deliver a balance sheet to clients must file with the Commission in Part I of the Form ADV an unaudited balance sheet prepared in accordance with generally accepted accounting principles. The form further requires that an audited balance sheet be included in Part II of Form ADV by advisers (1) who have custody or possession of clients' funds or securities or (2) who require prepaid advisory fees in excess of \$500 per client and six months or more in advance.

The brochure rule as repropounded in the July 1977 Releases would have required all advisers to include in the written disclosure statement an unaudited balance sheet, current as of a date not more than 15 months prior to its distribution. That requirement was the object of strong criticism. Of the 165 public comments received on the proposals, 116 addressed the financial information requirement and almost all of the comments were negative.

In general, the commentators were concerned that providing a balance sheet, no matter in what form, would not necessarily provide the client with relevant information on which to base a judgment about the adviser's financial condition and might easily be misinterpreted. In addition, it was asserted that requiring audited balance sheets would be very expensive. Advisers in general, and particularly those doing business as sole proprietors, were concerned about an asserted invasion of privacy in being required to disclose financial information. The commentators also were concerned that a financial disclosure requirement might deter new entrants into the advisory business and might unfairly incline prospective clients toward selecting larger firms rather than smaller firms.

Some advisers who are sole proprietors objected to the balance sheet requirement on the grounds that they would have to disclose non-advisory related assets and liabilities. It can be noted, however, that sole proprietor broker-dealers are already subject to the more stringent requirement of filing audited balance sheets annually.

A few commentators, however, addressed themselves to a balance sheet requirement for advisers who have custody or possession of clients' funds or securities or who require substantial prepayments of advisory fees. These commentators indicated it would be more appropriate for such

advisers to disclose their financial condition.

The requirement that all advisers file a balance sheet with the Commission is based on two principal reasons. First, the filing of financial information will assist the Commission's staff in its inspection and enforcement efforts with respect to registered investment advisers. Second, the information should assist the Commission generally regarding its regulatory programs relating to investment advisers.

The balance sheet requirement should not be unduly burdensome. As a matter of good business practice, advisers should maintain those books and records necessary to prepare a balance sheet. In addition, many states have some form of requirement concerning the filing of balance sheets as part of their investment adviser registration process. New York, for example, requires advisers doing business in that jurisdiction to file a balance sheet with their registration statement.

B. Contents of Written Disclosure Statement—Part II of Form ADV. Part II of revised Form ADV contains the information required in the written disclosure statement. At the beginning of Part II, there is an introductory section that contains (1) the name, address, and telephone number of the investment adviser and (2) a general summary of the types of information included in the disclosure statement. In addition, there is a statement of disclaimer to the effect that the Commission has not passed upon or approved the information regarding the investment adviser contained in Part II or passed upon or approved the qualifications or business practices of the investment adviser.

The written disclosure statement contains information concerning the background and business practices of an investment adviser, including (1) the types of advisory services provided and the fees for such services; (2) the types of clients using the adviser's services; (3) the types of securities with respect to which the adviser generally gives advice; (4) the methods of analysis used by the adviser; (5) the standards of education, if any, established by the adviser with respect to persons associated with the adviser; (6) the actual education and business experience of certain associated persons; (7) other business activities of the adviser, including securities industry activities and affiliations; (8) the adviser's participation, if any, in connection with securities transactions of clients; (9) any conditions for establishing or maintaining advisory accounts; (10) the nature of the adviser's discretionary authority, if any, with respect to advisory accounts; (11) the adviser's process for reviewing ac-

counts; and (12) with respect to certain advisers, a certified balance sheet.

The information to be included in Part II of Form ADV and significant issues raised by commentators concerning such information are discussed below.

1. Advisory services and fees. The first item of Part II relates to the types of services generally offered by the adviser and the fees for such services. Using a checklist, the adviser must indicate the type or types of services generally offered to clients, including but not limited to investment supervisory services, account management services not involving investment supervisory services, or the issuance, on a subscription basis, of a periodic publication relating to securities. In addition, an adviser must furnish information concerning the basis or bases of compensation, amounts charged (basic fee schedules and an indication of whether fees are negotiable), and when such fees are payable. If advisory fees are payable prior to the rendering of the services, the statement must indicate whether, to what extent, and under what conditions, such fees will be refunded to clients. Finally, the adviser must disclose the procedures and conditions, if any, pursuant to which the investment adviser or any client of the investment adviser may terminate an advisory contract prior to the termination date set forth in the contract.

Many commentators thought that the language in related items of the old Form ADV and repropounded Rule 204-3(d) was confusing and needed clarification. Those items, each relating to the types of advisory services provided and the advisory fees associated with those services, have been combined as item (1) of new Part II. Clarifications were made in the questions to avoid confusion about the detail expected concerning the adviser's fee schedule.

2. Types of clients. The second item on Part II relates to the type of clients to whom the adviser generally provides investment advice. The adviser is required to list such types of clients, including but not limited to, individuals or specified classes of individuals, investment companies, pension and profit-sharing plans and banks.

3. Types of securities. The third item on Part II requires the adviser to indicate on a check list the types of securities concerning which the adviser generally provides advice.

4. Methods of analysis. The fourth item on Part II concerns the adviser's methods of analysis, sources of information and investment techniques. The adviser, in narrative fashion, must relate (1) its method of securities analysis, e.g., fundamental analysis, technical analysis, cyclical analysis or

charting; (2) the sources of information applicant uses, e.g., financial newspapers and magazines, company prepared information, inspections of corporate activities, research materials prepared by others, or corporate rating services; and (3) the types of investment strategies generally recommended or used to implement any investment advice rendered to clients, e.g., long term purchases (securities will be held at least one year except in unusual circumstances), short term purchases (securities will generally be sold within one year after purchase), trading (securities will generally be sold within 30 days after purchase), short sales, margin transactions, or option writing, including covered options, uncovered options, and spreading strategies.

Certain clarifications have been made in this item in response to reservations expressed by commentators regarding the intended detail of the required responses. Some commentators stated that fully responsive answers to the question would be too lengthy and detailed to be read, and that abbreviated answers would be too general to be of any use.

This item is intended to provide an adviser's present and potential clients with a general description of how the adviser formulates its advisory policy. Although the Commission does not necessarily agree with the critical comments, it has revised the item to require that the information be set forth in narrative form. The narrative description should provide a more meaningful disclosure presentation for advisory clients.

5. Education and business experience. The fifth and sixth items in Part II relate to the education and experience of the adviser's personnel. In item five, the adviser must disclose if there are any general standards of education and business background applicable to persons associated with the adviser (other than clerical or ministerial personnel). In item six, advisers must disclose the name, age, formal education after high school and business background for the preceding five years of each member of the investment adviser's investment committee. If the adviser does not have an investment committee or similar committee, he must provide similar information with respect to persons who determine or approve the type of investment advice which will be rendered by or on behalf of the adviser.

Many commentators were critical of the questions relating to educational background. Their basic contention in this area was that there is no evidence that a better educated individual makes a better adviser. They were concerned that inclusion of this item might imply that there is a positive

correlation between educational background and the quality of advisory services. Given the absence of any substantive requirements relating to educational and business qualifications of investment advisers, the Commission believes that the disclosure of information concerning educational and business background will be useful to clients in selecting an adviser.

6. Other business activities. The seventh and eighth items in Part II relate to any other business activities of the adviser, including, specifically, his activities and affiliations in the securities business.

Apparently, many investment advisers provide investment advice only as an adjunct to their primary activity, which may be in the area of insurance or real estate, or perform advisory activities in addition to having an unrelated primary occupation. Since clients would normally wish to know the extent of his activity in the adviser area contrasted to his other business endeavors, a question concerning the adviser's other professional activities has been added. Finally, so that a client will have a complete picture of the adviser's activities, a question has been added asking whether the adviser offers or sells products other than securities to his clients.

The adviser must disclose to the client other business activities, for example, whether he is a broker or dealer, and whether he is affiliated with any person in the securities business. In view of the potential conflicts of interest which may arise if an investment adviser is affiliated with another entity in the securities business, it is important for an adviser's clients and prospective clients to be informed of these affiliations.

7. Securities Transactions. The ninth item in Part II requires the adviser to make certain disclosures concerning his relationship, if any, to the securities transactions of his advisory clients. An adviser must disclose whether (1) as principal, he sells securities to or buys securities from any advisory client; (2) as agent, he effects securities transactions for any advisory client or any person other than an advisory client; and (3) he recommends to advisory clients or prospective advisory clients the purchase or sale of any security in which the adviser holds a position or interest. Where the adviser engages in any such transactions, he must describe the circumstances relating to such transactions and any internal procedures established concerning conflicts of interest in such transactions. In addition, the adviser must describe any restriction imposed upon himself or any associated person in connection with the purchase or sale for his or their own ac-

count of securities recommended to advisory clients.

8. Investment supervisory and account management services. The tenth, eleventh and twelfth items relate primarily to advisers who provide investment supervisory services or account management services. Such advisers must describe (1) what conditions, if any, including minimum amount of assets under management, are imposed on accounts; (2) the extent, if any, of discretionary authority involved in the supervision and management of accounts; (3) the process of reviewing each investment advisory account; and (4) reports regularly furnished to clients concerning their advisory accounts. Certain questions included in the reproposal have been eliminated, some because the answers would most likely be very general and uninformative, and others because the information was considered unnecessary.

Item 11 also must be answered by advisers who, although not providing investment supervisory or account management services, nevertheless determine or suggest the broker or dealer through which, or the commission rates at which, securities transactions for client accounts are effected. Item 11 contains questions which are designed to provide clients with general information concerning the adviser's brokerage placement practices, including the selection of brokers and the amount of commissions.⁴

Two questions have been deleted in order to make the written disclosure statement a more understandable document. In the brochure rule and Form ADV as repropounded in July 1977, advisers providing investment supervisory or account management services were asked to describe their organizational structure and to discuss specific client circumstances which the adviser considers in supervising investments or managing accounts. The question relating to the adviser's organizational structure has been eliminated because a client should receive sufficient information about the adviser's business practices from the answers to items 4, 11 and 12. The question relating to specific client circumstances which influence an adviser's investment decisions has also been eliminated as being too burdensome.

9. Balance sheet. The modified balance sheet requirement for Part II of Form ADV would apply to advisers (1) who have custody or possession of clients' funds or securities or (2) who require clients to pre-pay advisory fees in excess of \$500 and for six months or more in advance. Unlike the Part I re-

⁴See Securities Act Release No. 33-6019, January 30, 1979, for a general discussion of the background, purpose and effect of this disclosure.

quirement for an unaudited balance sheet, an audited balance sheet is required by item 13 of Part II since clients and prospective clients should have more reliable information concerning the financial condition of advisers who hold clients' funds or securities or who require substantial pre-paid fees.

The requirement of filing an audited balance sheet with the Commission and of delivering it to clients should not be unduly burdensome for these advisers. Advisers who maintain custody or possession of client funds or securities are required by Rule 206(4)-2 [17 CFR 275-206(4)-2] under the Act to have these funds or securities examined annually by an independent public accountant. Since these advisers are accustomed to having an audit of certain of their books and records, requiring an audited balance sheet should not be an undue burden.

C. Revisions Related to Schedules A-G of Forms ADV and BD. Schedules A-D to Form ADV and Form BD, the registration form under the exchange Act for brokers and dealers, have been revised to make the two sets of schedules identical. This will enable registered investment advisers who are also registered as broker-dealers and prospective dual registrants to file these schedules without as much administrative burden. With identical schedules, dual registrants will be able to prepare one set and make a duplicate, marking each to indicate whether it relates to Form ADV or Form BD, rather than being required to prepare two sets of originals. Schedules E and F have been included to allow space to expand answers to Part I and II respectively. Schedule G provides for the balance sheet.

While the commentators were pleased that the Commission was attempting to develop a uniform registration form for use by the Commission and those states which require investment adviser registration, they had serious objections to proposed Schedule G which would have been the means to accomplish this goal. The commentators were concerned that what was intended to make registration easier for investment advisers would have actually resulted in a more burdensome, detailed registration process.

The information proposed in Schedule G has been eliminated from Form ADV. The Commission and its staff intend, however, to pursue discussions with representatives of the North American Securities Administrators Association and other associations of state securities administrators toward the goal of adoption of a satisfactory schedule for supplementary information.

IV. REQUIREMENT TO REVISE FORM ADV, RULE 204-1

Rule 204-1(a) has been amended to require registered investment advisers, and those advisers whose application for registration is pending when the revised form becomes effective, to file a revised Form ADV. Such advisers must file a revised form no later than July 31, 1979.

In addition, Rule 204-1(b) has been amended to require investment advisers to amend the individual items contained in Parts I and II of Form ADV on the basis of: (1) those items which require amendments promptly after any change; (2) those items which require amendments promptly after material changes; and (3) those items which require amendments annually.

The first category consists of a limited number of items in Part I which are essential for the Commission to monitor the status of registrants and which apprise the Commission of any statutory disqualifications which exist with respect to an adviser or any associated person. The second category contains the balance of the items in Part I (except for the general business questions and question 17) and all of the questions in Part II with the exception of question 13. The third category consists of the general business questions and question 17 in Part I and question 13 in Part II and certain other items in Part I and the balance of Part II changed in a non-material manner.

V. RECORDKEEPING REQUIREMENT

The Commission has amended the Act's recordkeeping provision to require advisers to keep a record of disclosure statements provided clients under the brochure rule. Rule 204-2 generally requires registered advisers to make and keep accurate and current certain records. A new paragraph (a)(14) has been added to require such advisers to keep (1) a copy of each written statement sent to a client or prospective client in accordance with the provisions of the brochure rule and (2) a record of the dates that each statement was delivered or offered to be delivered to any client or prospective client who subsequently becomes a client.

VI. FORM ADV-S

The Commission has amended Rule 204-1 to require investment advisers, on an annual basis, to file a new Form ADV-S informing the Commission of certain information about the adviser's business. Form ADV-S is intended to advise the Commission whether the adviser is still in business and whether his address has changed, as well as to remind the applicant of his responsibility to file required amendments to his Form ADV. In addition, Form

ADV-S contains a reminder to an adviser to file on Schedule G of Form ADV a current balance sheet that satisfies the requirements of Item 17 of Part I or Item 13 of Part II of Form ADV. Form ADV-S also requires an adviser to file a copy of each form of written disclosure statement, other than disclosure statements in the form of Part II, used by the adviser to comply with the brochure rule during the preceding fiscal year of the adviser.

Use of this form combined with appropriate follow-up measures should allow the Commission to remove inactive registrants from its list of active advisers. In addition, by requiring notification of a change of business address in the Form ADV-S, the regional offices may avoid wasteful inspection trips to former places of business.

AUTHORITY, EFFECTIVE DATE

The Commission hereby adopts Rule 204-3 and paragraph (14) of Rule 204-2(a), pursuant to the authority contained in Sections 204, 206(4) and 211(a) of the Act [15 U.S.C. 80b-4, 80b-6 and 80b-11(a)]. The Commission hereby revises Rule 204-1 and adopts Form ADV-S pursuant to the authority contained in Sections 204, 206(4) and 211(a) of the Act. The Commission hereby revises Form ADV and Schedules A-G pursuant to the authority contained in Sections 203 [15 U.S.C. 80b-3], 204, 206(4) and 211(a) of the Act.⁶

The amendments to Schedules A-D to Form BD, the registration form for brokers and dealers under the Exchange Act, are adopted pursuant to the authority of Sections 15(b)(1) and 23(a) of the Exchange Act [15 U.S.C. 78o(b)(1) and 78w(a)]. Since these amendments to Schedules A-D to Form BD are technical in nature and are intended to ease the administrative burden on brokers and dealers who are, or may become, registered as investment advisers, the Commission finds that any burden on competition

⁶Item 11 of Part II of Form ADV, which requires narrative disclosure of certain information relating to brokerage placement practices to the Commission and, under Rule 204-3, to advisory clients and prospective advisory clients, is also adopted, in part, pursuant to the authority contained in Section 23(e)(2) of the Exchange Act [15 U.S.C. 78bb(e)(2)]. In Securities Act Release No. 33-6019, dated January 30, 1979, the Commission announced the simultaneous adoption of similar disclosure requirements for registered investment companies and certain other issuers and made certain findings as required by Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)]. The discussion of these disclosure requirements and the findings contemplated by Section 23(a)(2) which appear in that notice are, with respect to information required by Item 11 of Part II of Form ADV, herein incorporated by reference.

imposed by the amendments to Schedules A-D to Form BD is necessary and appropriate in the public interest and for the protection of investors.

The Commission is aware that the new reporting and disclosure provisions adopted may impose certain additional burdens on applicants. Therefore, investment advisers who plan to register prior to July 31, 1979, may file either a current or a revised Form ADV, but must file a revised Form ADV by July 31, 1979. Advisers presently registered must file an amendment by July 31, 1979, to conform with the new requirements (a filing for which no fee is charged).

The foregoing adoption and revised rules and forms become effective July 31, 1979.

The registration forms are being printed and will be available shortly from the Commission's Office of Publications. After the revised forms become available, registrants are encouraged to amend their filings to comply with the new requirements before July 31, 1979.

The Commission finds that the changes in the rules and forms adopted today from those published in the July 1977 Releases have already been generally subject to comment and are either technical in nature or less burdensome than the proposals in the July 1977 Releases so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act [5 U.S.C. § 533 et seq.] are not necessary.

COMMISSION ACTION

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

I. Part 249 of Chapter II of Title 17 of the Code of Federal Regulations under the Securities Exchange Act of 1934 is amended as follows:

§ 249.50 [Amended]

By amending § 249.501 Form BD, for application for registration as a broker or dealer or to amend or supplement such application.

Schedules A-D to Form BD are amended in certain technical respects. (A copy of Schedules A-D to Form BD are attached hereto).

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

II. Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 is amended as follows:

1. By revising § 275.204-1 in its entirety as follows:

§ 275.204-1 Amendments to application for registration.

(a) Every investment adviser whose registration is effective or whose application for registration is pending July 31, 1979, shall then file as an amendment to the application a complete Form ADV (§ 279.1 of this chapter) as revised as of July 31, 1979, unless it shall have prior thereto so amended its application.

(b)(1) If the information contained in the response to questions 2, 4, 6, 10, 12(a), 12(b) and 14 of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, or if the information contained in the response to questions 5, 7, 8, 9 and 11 of Part I, or any question in Part II (except question 13), of any application for registration as an investment adviser, or in any amendment thereto, become inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (§ 279.1 of this chapter) Correcting such information.

(2) If the information contained in response to questions 5, 7, 8, 9 and 11 of Part I, or any question in Part II (except question 13), of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate but not in a material manner, or the information contained in response to questions 12(c), 13, 15 and 16 of Part I of any application for registration as an investment adviser; or in any amendment thereto, becomes inaccurate for any reason, the investment adviser shall file an amendment on Form ADV (§ 279.1 of this chapter) correcting such information within 90 days of the end of its fiscal year. In addition, a balance sheet, as required by question 17 of Part I or question 13 of Part II, shall be filed within 90 days of the end of applicant's fiscal year.

(3) If the information contained in response to question 3 of Part I becomes inaccurate, the investment adviser shall file an amendment on Form ADV correcting such information within 90 days of the end of applicant's fiscal year. However, if the investment adviser's license has been withdrawn or involuntarily terminated, the investment adviser shall promptly file an amendment.

(c) Every investment adviser whose registration is effective on the last day of its fiscal year shall file a Form ADV-S (§ 279.3 of this chapter) within 90 days of the end of its fiscal year unless its registration has been withdrawn, cancelled or revoked prior to that date.

(d) Every document required pursuant to this rule shall constitute a "report" within the meaning of Sec-

tions 204 and 207 of the Act [15 U.S.C. 80b-4, 80b-7].

2. By adding new paragraph (a)(14) to § 275.204-2 to read as follows:

§ 275.204-2 Books and records to be maintained by investment advisers.

(a) ***

(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule 204-3 under the Act, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

3. By adding a new § 275.204-3 to read as follows:

§ 275.204-3 Written disclosure statements.

(a) *General requirement.* Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to Section 203 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part II of its form ADV which complies with § 275.204-1(b) under the Act or a written document containing at least the information then so required by Part II of Form ADV.

(b) *Delivery.* (1) An investment adviser, except as provided in paragraph (2), shall deliver the statement required by this section to an advisory client or prospective advisory client (i) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(2) Delivery of the statement required by paragraph (1) need not be made in connection with entering into (i) an investment company contract or (ii) a contract for impersonal advisory services.

(c) *Offer to deliver.* (1) An investment adviser, except as provided in paragraph (2), annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section.

(2) The delivery or offer required by paragraph (1) need not be made to advisory clients receiving advisory services solely pursuant to (i) an investment company contract or (ii) a contract for impersonal advisory services requiring a payment of less than \$200;

RULES AND REGULATIONS

(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200 or more, an offer of the type specified in paragraph (1) shall also be made at the time of entering into an advisory contract.

(4) Any statement requested in writing by an advisory client pursuant to an offer required by this paragraph must be mailed or delivered within seven days of the receipt of the request.

(d) *Omission of inapplicable information.* If an investment adviser renders substantially different types of investment advisory services to its advisory clients, any information required by items (4) through (6) or (10) through (13) of Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(e) *Other disclosures.* Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

(f) *Definitions.* For the purpose of this rule: (1) "contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services; (i) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (ii) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particu-

lar security; or (iii) any combination of the foregoing services.

(2) "entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(3) "investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of Section 15(c) of that Act.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

III. Part 279 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

§ 279.1 [Amended]

1. By amending § 279.1 Form ADV, for application for registration of investment adviser, and for amendments to such registration statement.

This form shall be filed pursuant to Rule 203-1 (§ 275.203-1 of this chapter) as an application for registration of an investment adviser pursuant to sections 203(c) or 203(g) of the Investment Advisers Act of 1940, and also as an amendment to registration pursuant to Rule 204-1 (§ 275.204-1 of this chapter).

(A copy of Form ADV as adopted has been filed with the Office of the Federal Register as part of the original document and is presented in 16 SEC Docket 14).

§ 279.3 [Amended]

2. By amending § 279.3 Form ADV-S, annual report of registered advisers.

This form shall be filed pursuant to Rule 204-1(c) (§ 275.204-1 of this chapter) as an annual report of registered investment advisers.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 30, 1979.

[8010-01-C]

FORM ADV

(Instruction Sheet) APPLICATION FOR REGISTRATION AS AN INVESTMENT ADVISER
OR TO AMEND SUCH AN APPLICATION UNDER THE INVESTMENT
ADVISERS ACT OF 1940

GENERAL INSTRUCTIONS FOR PREPARING AND FILING FORM ADV AND SPECIAL INSTRUCTIONS
FOR COMPLETING FORM ADV AS AN APPLICATION FOR REGISTRATION WITH THE SECURITIES
AND EXCHANGE COMMISSION AS AN INVESTMENT ADVISER OR TO AMEND SUCH AN APPLICATION

1. This Form and any Schedules and continuation sheets required in connection with it shall be completed and filed in triplicate with the Securities and Exchange Commission, Washington, D.C. 20549. Retain one additional copy for your records. All information required by Form ADV and any Schedule thereunder must be submitted on the officially prescribed forms (or mechanical reproductions thereof). Additional copies are available at any office of the Commission.
2. Form ADV consists of two parts, Part I and Part II. Both parts shall be completed and filed with the Commission.
3. At the time of the filing of an application for registration under the Act, the applicant shall pay to the Commission a fee of \$150, no part of which shall be refunded. There is no fee for the filing of any amendments to Form ADV.
4. Each copy of the execution page must contain an original manual signature of the appropriate duly authorized individual. Mechanical reproductions of signatures are not acceptable. All other pages containing correct information may be mechanically reproduced by any method producing clear, legible copies of identical type size. Copies must be on 8-1/2 x 11 inch paper.
5. If Form ADV is filed by a sole proprietor, it shall be signed by the proprietor; if it is filed by a partnership, it shall be signed in the name of the partnership by a general partner; if it is filed by an unincorporated organization or association which is not a partnership, it shall be signed in the name of such organization or association by the managing agent—i.e., a duly authorized person who directs or manages or who participates in directing or managing its affairs; if it is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized.
6. If the space provided for any answer on the Form is insufficient, the complete answer shall be prepared on Schedule E with respect to Part I of the Form and on Schedule F with respect to Part II of the Form, which shall be attached to the Form. If the space provided for any answer on the Schedules is insufficient, the answer shall be completed on additional copies of the applicable Schedule which shall also be attached to the Form.
7. Individuals' names, except for executing signatures, shall be given in full wherever required (last name, first name, middle name). The full middle name is required. Initials are not acceptable unless the individual legally has only an initial. If this is the case, so indicate after the initial.

CAUTION: WHEN ANY ITEM ON A PAGE IS AMENDED, IT IS NECESSARY TO ANSWER ALL ITEMS ON THE PAGE BEING AMENDED. PAGES WHICH CONTAIN OBSOLETE INFORMATION ARE RETIRED TO THE COMMISSION'S INACTIVE FILES.

8. Definitions. Unless the context otherwise requires:

a. All terms used in the Form have the same meaning as in the Investment Advisers Act of 1940 and the rules and regulations thereunder.

b. "Jurisdiction" means a state, a territory, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

c. "Applicant" means the investment adviser or person which will be the investment adviser and not the individual completing the form unless they are identical. "Applicant" includes a "Registrant."

d. "Self-Regulatory Organization" means any national securities exchange, national securities association, or clearing agency, registered under the Securities Exchange Act of 1934.

e. "Client" means an investment advisory client.

9. UNDER SECTIONS 203(c), 204, 206, AND 211(a) OF THE INVESTMENT ADVISERS ACT OF 1940 AND THE RULES AND REGULATIONS THEREUNDER, THE COMMISSION IS AUTHORIZED TO SOLICIT THE INFORMATION REQUIRED BY THIS FORM FROM APPLICANTS FOR REGISTRATION AS INVESTMENT ADVISERS. THE INFORMATION SPECIFIED BY THIS FORM (OTHER THAN SOCIAL SECURITY NUMBERS) MUST BE PROVIDED PRIOR TO THE PROCESSING OF ANY APPLICATION. DISCLOSURE OF SOCIAL SECURITY NUMBERS IS VOLUNTARY. THE INFORMATION WILL BE USED FOR THE PURPOSE OF DETERMINING WHETHER THE COMMISSION SHOULD GRANT OR DENY REGISTRATION TO AN APPLICANT AND OTHER REGULATORY PURPOSES. SOCIAL SECURITY NUMBERS WILL ASSIST THE COMMISSION IN IDENTIFYING APPLICANTS AND, THEREFORE, IN PROMPTLY PROCESSING APPLICATIONS. INFORMATION SUPPLIED ON THIS FORM WILL BE INCLUDED IN THE PUBLIC FILES OF THE COMMISSION AND WILL BE AVAILABLE FOR INSPECTION BY ANY INTERESTED PERSON. A FORM WHICH IS NOT PREPARED AND EXECUTED IN COMPLIANCE WITH APPLICABLE REQUIREMENTS MAY BE RETURNED AS NOT ACCEPTABLE FOR FILING. ACCEPTANCE OF THIS FORM, HOWEVER, SHALL NOT CONSTITUTE ANY FINDING THAT IT HAS BEEN FILED AS REQUIRED OR THAT THE INFORMATION SUBMITTED IS TRUE, CURRENT, OR COMPLETE. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. (See 18 U.S.C. 1001 and 15 U.S.C. 80b-17.)

SPECIAL INSTRUCTIONS FOR FILING FORM ADV AS AN APPLICATION

10. If Form ADV is being filed as an application for registration, all applicable items must be answered in full. If any "item" is not applicable, indicate by "none" or "N/A" as appropriate. Items requiring information relating to the business activities of applicant should be answered to disclose what such activities will be when registration becomes effective.

11. If any non-resident of the United States is named in the Form, consult Rule 0-2 to determine whether he is required to file a consent to service of process and a power of attorney. Non-residents of the United States should also consult Rule 204-2(j) under the Act concerning the notice or undertaking relating to books and records which non-resident investment advisers are required to file with Form ADV.

SPECIAL INSTRUCTIONS FOR AMENDING FORM ADV

12. Rule 204-1(b)(1) requires that if the information contained in response to questions 2, 4, 6, 10, 12(a), 12(b), and 14 of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, or if the information contained in response to questions 5, 7, 8, 9, and 11 of Part I, or any question in Part II (except question 13), of any application for registration as an investment adviser, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV correcting such information. In addition, if the information contained in response to questions 5, 7, 8, 9, and 11 of Part I or any question in Part II, (except question 13), of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate but not in a material manner, or the information contained in response to questions 12(c), 13, 15, and 16 of Part I of any application for registration, becomes inaccurate for any reason, the investment adviser shall file an amendment on Form ADV correcting such information no later than 90 days after the end of applicant's fiscal year. In addition, a balance sheet, as required by question 17 of Part I or question 13 of Part II, shall be filed no later than 90 days after the end of applicant's fiscal year.

If the information contained in response to question 3 of Part I becomes inaccurate, the investment adviser shall file an amendment on Form ADV correcting such information no later than 90 days after the end of applicant's fiscal year. However, if the investment adviser's license has been withdrawn or involuntarily terminated, the investment adviser shall promptly file an amendment.

13. When an amendment is necessary, only the pages being amended, the execution page and page 1 of Part I need be filed, although these must be completed in full. Three copies of each of such pages should be filed.

INSTRUCTIONS AS TO SPECIFIC ITEMS ON FORM ADV

14. Item 2(a) - Include a street address; post office box numbers alone are not acceptable.

15. Execution - The execution must include an original manual signature. Mechanical reproductions of signatures are not acceptable.

16. Item 8(b) - If a registered partnership is dissolved and a new one is created to continue the business of the old one, the new partnership must file a new or successor application as an investment adviser.

17. Item 10 - Check answers to Items 2(a), 8, and 9 of Part I, and the related Schedules, for the names of all persons who are covered by any of the sub-sections of Item 10 of Part I. Similarly, any persons who directly or indirectly control or are controlled by the applicant, including any employee, are covered by Item 10 of Part I. For each affirmative answer, list each person involved on a separate Schedule D and explain these incidents, including, for example, the parties involved, time and place, subject matter, and the outcome of the proceedings.

INSTRUCTIONS RELATING TO SCHEDULES

18. Schedule A - Schedule A is for corporations.

NOTE: If applicant is owned directly, or indirectly through one or more intermediaries, by a corporation, then such corporation's shareholders should be considered in determining who must be listed on Schedule A.

19. Schedule B - Schedule B is for partnerships.

20. Schedule C - Schedule C is to be completed only by organizations or associations which are not sole proprietorships, partnerships, or corporations.

21. Schedule D - Schedule D is to be filed for the following classes of persons:

- (a) Each natural person named in Items 2(a), 8, or 9 or any Schedule thereunder, except that Schedule D need not be furnished for any person who meets both the following conditions: (1) he owns less than 10% of any class of equity security of the applicant, and (2) he is not an officer, director or person with similar status or functions.
- (b) Each person subject to any action reported under Item 10; and
- (c)(1) Each member of applicant's investment committee or similar group, if any, which determines or approves what investment advice shall generally be rendered by applicant to any client, or to which clients such investment advice shall be rendered.
- (2) In the absence of an investment committee or similar group, each person associated with applicant who determines or approves what investment advice shall be rendered by applicant to any client, or to which clients such investment advice shall be rendered (if more than five such persons, it is necessary to complete a separate Schedule D only for those persons having supervisory responsibility over those persons described in this paragraph).

22. Schedule E - Schedule E may be used (1) where the space provided for any answer in Part I on the form is insufficient, or (2) in response to each item in Part I of the form which requires the submission of Schedule E. Schedule E should not be used when the space on any other Schedule is insufficient. In that case use additional copies of the applicable Schedule.

23. Schedule F - Schedule F may be used (1) where the space provided for any answer on Part II of the Form is insufficient, or (2) in response to each item in Part II of the Form which requires the submission of Schedule F. Schedule F should not be used when the space on any other Schedule is insufficient. In that case use additional copies of the applicable Schedule.

24. Schedule G - Schedule G is for the balance sheet required by Item 17 of Part I and Item 13 of Part II.

FORM ADV APPLICATION FOR REGISTRATION AS AN INVESTMENT
Part I ADVISER OR TO AMEND SUCH AN APPLICATION UNDER
THE INVESTMENT ADVISERS ACT OF 1940

Page 1

Securities and Exchange Commission, Washington, D.C. 20549

SEC USE
FILE No.
801-
DOC. SEQ. NO.

GENERAL: Read all instructions before preparing the form. Please print or type all responses. If this form is filed as an amendment, a completed and signed execution page, Page 1 of Part I (this page) and those pages containing items which are being amended or which have changed since the previous filing must be filed. Such pages should be completed in full. Submit check for \$150 if this is an application for registration. Return in triplicate

1. (a) If this is an APPLICATION for registration, check here, ☐ and complete all items in full.
(b) If this is an AMENDMENT to an application, check here, ☐ and specify below all parts which are amended.

Item(s) _____ of Part I of Form ADV Schedule A _____ Schedule B _____
Item(s) _____ of Part II of Form ADV
Schedule C _____ Schedule D _____
Schedule E _____ Schedule F _____ Schedule G _____

2. (a) Exact name, principal business address, mailing address, if different, and telephone number of applicant:

Full name of applicant (If sole proprietor, state last, first, and middle name): _____ IRS Empl. Ident. No. _____

Name under which business is conducted, if different: _____

If name of business is hereby amended, state previous name: _____

Address of principal place of business: (Do not use P.O. Box Number)

(NUMBER AND STREET) _____ (CITY) _____ (STATE) _____ (ZIP CODE) _____
Mailing Address, if different: _____

Telephone Number: _____

(AREA CODE) _____ (TELEPHONE NUMBER) _____
Address of each location of the books and records applicant is required to maintain, pursuant to Section 204 of the Investment Advisers Act of 1940 and the rules thereunder, if different from address of principal place of business: _____

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute a violation of the Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

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2.(b) Persons to contact for further information concerning this Form:

Name: _____ Title: _____

Mailing Address: _____ Telephone No.: _____

- 2.(c) Applicant consents that notice of any proceeding before the Commission in connection with its application for or registration as an investment adviser may be given by sending notice by registered or certified mail or confirmed telegram to the person named at the address given.
- (Last name) (First name) (Middle name)

(No. and Street)

(City) (State) (ZIP Code)

- 2.(d) Does applicant have offices other than that mentioned in item 2(a)?
(If "yes," state their addresses and telephone numbers on Schedule E.)

YES NO

- 2.(e) Applicant's fiscal year ends: _____ day _____ month

- 3.(a) Applicant is filing or has filed its application for registration or license, or membership as an investment adviser with the following: (Place a code after each applicable jurisdiction in accordance with the following: If currently applying, insert number "1," if application is pending, insert number "2," if already registered, licensed, or a member, insert number "3.")

- 3.(b) If any license, registration, or membership listed below is of a restricted nature or has been suspended or involuntarily terminated, or withdrawn or voluntarily terminated, explain on Schedule E.

AL__ AK__ AZ__ AR__ CA__ CO__ CT__ DE__ DC__ FL__ GA__ HI__ ID__ IL__ IN__ IA__
KS__ KY__ LA__ ME__ MD__ MA__ MI__ MN__ MS__ MO__ MT__ NE__ NV__ NH__ NJ__ NM__
NY__ NC__ ND__ OH__ OK__ OR__ PA__ RI__ SC__ SD__ TN__ TX__ UT__ VT__ VA__ WA__
WV__ WI__ WY__ PR__ OTHER _____
(Specify)

4. Applicant is a:

☐ Corporation ☐ Partnership ☐ Sole Proprietorship

☐ Other (specify): _____

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, civil, criminal or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

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5. If applicant is a corporation:

(a) Date and place of incorporation:

Date: _____ State: _____
(Month-Day-Year)

(b) List below each class of equity security:

Class	Voting	Non-Voting
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If applicant is a sole proprietor, state current legal residence address and social security number.

Social Security No.: _____

(Number and Street) (City) (State) (ZIP Code)

(a) Is applicant filing this application as a successor who is taking over all or substantially all of the assets and liabilities and continuing the business of a registered investment adviser? If "yes," state:

(1) Date of Succession: _____

(2) Full name, IRS Empl. Ident. No. and SEC File No. of predecessor:

Name: _____
IRS Empl. Ident. No.: _____
SEC File Number: _____

(b) Has applicant, during the previous ten years, merged with or acquired another registered investment adviser? (If "yes," explain on Schedule E.)

YES NO

(a) If applicant is a corporation, complete Schedule A.

(b) If applicant is a partnership, complete Schedule B.

(c) If applicant is other than a sole proprietorship, partnership, or corporation, complete Schedule C.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute criminal action. Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute criminal action. Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute criminal action.

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- 9.(a) Does any person not named in Items 2(a) and 8, or any Schedule thereunder, directly or indirectly through agreement or otherwise, exercise or have the power to exercise a controlling influence over the management or policies of applicant?..... YES NO
 (If "yes," state on Schedule E the exact name of each person (if individual, state last, first, and middle names) and describe the agreement or other basis through which such person exercises or has the power to exercise a controlling influence.)
- (b) Is the business of applicant wholly or partially financed, directly or indirectly, by any person not named in items 2(a) and 8, or any Schedule thereunder, in any manner other than by: (1) a public offering of securities made pursuant to the Securities Act of 1933; (2) credit extended in the ordinary course of business by suppliers, banks and others; or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1)?..... YES NO
 (If "yes," state on Schedule E the exact name (last, first, middle) of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)
10. State whether the Applicant, any person named in Items 2(a), 8 or 9, or any Schedule thereunder, or any other person directly or indirectly controlling, or controlled by applicant, including any employee of applicant:
- (a) Has been found by the Securities and Exchange Commission or any jurisdiction to have willfully made or caused to be made in any application for registration or report required to be filed with the Commission under the Investment Advisers Act of 1940 or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or to have omitted to state in any such application or report any material fact which is required to be stated therein. YES NO
- (b) Has been convicted of or has pleaded nolo contendere to, within 10 years preceding the filing of any application for registration or at any time thereafter, any felony or misdemeanor:
- (i) involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense; YES NO
- (ii) arising out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary; YES NO
- (iii) involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or YES NO
- (iv) involving the violation of Section 152, 1341, 1342 or 1343 or Chapter 25 or 47 of Title 18, United States Code (concealment of assets, false oaths and claims, or bribery, in any bankruptcy proceeding; mail fraud, fraud by wire, including telephone, telegraph, radio or television; counterfeiting, forgery, fraud, false statements). YES NO

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws, and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

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WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute a violation of the Federal securities laws and may result in disciplinary, administrative, i. active or criminal action.
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

- (c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security or arising out of any securities or investment advisory activity.
- YES NO
— —
- (d) Has been found by the Securities and Exchange Commission or any other jurisdiction to have willfully violated or willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or to have failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision, or to have been unable to comply with any of the foregoing provisions.
- YES NO
— —
- (e) Is subject to an order of the Securities and Exchange Commission entered pursuant to Section 203(f) of the Investment Advisers Act of 1940 barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person.
- YES NO
— —
- (f) Has been denied membership or registration with, or participation in, or has been suspended, revoked or expelled from membership, participation in or registration with any self-regulatory organization registered under the Securities Exchange Act of 1934.
- YES NO
— —
- (g) Has been denied registration (license) with, or suspended, revoked or expelled from registration (license) with the Securities and Exchange Commission or any jurisdiction (or any agency thereof) as a broker, dealer, investment adviser, securities salesman, or municipal securities dealer, or has been barred from being associated with a person engaged in such business.
- YES NO
— —
- (h) Has been found to have been a cause of (1) the denial, suspension, or revocation of any person's (a) registration with the Securities and Exchange Commission or any jurisdiction (or any agency thereof), or (b) membership or participation in any self-regulatory organization registered under the Securities Exchange Act of 1934; or (2) any person's expulsion from such self-regulatory organization.
- YES NO
— —

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- (i) Has been, within the past 10 years, the subject of any cease and desist, desist and refrain, prohibition, or similar order which was issued by the United States or any jurisdiction arising out of the conduct of the business of a broker, dealer, municipal securities dealer, or investment adviser.

YES NO
— —

- (j) Has been the subject of any order, judgment, decree or other sanction of a foreign court, foreign exchange, or foreign governmental or regulatory agency arising out of any securities or investment advisory activities.

YES NO
— —

- (k) State whether applicant, any person named in Items 2(a), 8 or 9, or any Schedule thereunder, or any other person directly or indirectly controlling or controlled by applicant, including any employee, is presently the subject of any public proceedings in which an adverse decision would result in any of the foregoing questions being answered "yes."

YES NO
— —

NOTE: For purposes of Item 10, applicant is required to include representations as to clerical and ministerial employees.

11. Complete a separate Schedule D for each appropriate person in accordance with the instructions thereon and instruction 21 to this form.

12. Does applicant, or any person associated with applicant, have custody or possession of, or have authority to obtain custody or possession of:

- (a) Securities of any client?

YES NO
— —

- (b) Funds of any client?

YES NO
— —

REMINDER: Rule 206(4)-2 contains special provisions relating to investment advisers who have custody or possession of securities or funds of their advisory clients.

- (c) If the answer to any of the foregoing questions of item 12 is "yes," provide the approximate value of the clients' funds and securities in applicant's custody or possession as of the end of the last fiscal year.

- 13.(a) State the number of persons employed by applicant, other than clerical or ministerial employees.

- 13.(b) Does a substantial part of applicant's investment advisory business consist of rendering "investment supervisory services" as defined in Section 202 (a) (13) of the Act?

YES NO
— —

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the federal securities laws would violate such federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INFORMATION MISSTATED OR OMISSION OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

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14. Is applicant a defendant in any material civil litigation relating to its business as an investment adviser?

YES NO

(If "yes," explain on Schedule E)

15.(i) Opposite each of the following types of clients for which the applicant generally provides discretionary account management place a numeral indicating its rank (largest = 1) according to the approximate dollar amount under management in each category as of the end of applicant's last fiscal year. Omit any category where the dollar amount under management is less than (a) 10% of the amount stated in response to item (ii)(b) or (b) \$50,000, whichever is lesser.

- a) Individuals.....
 - b) Registered Investment Companies.....
 - c) Pension and profit-sharing plans.....
 - d) Banks.....
 - e) Charitable institutions.....
 - f) Educational institutions.....
 - g) Trust accounts.....
 - h) Corporations.....
 - i) Insurance companies.....
 - j) Other (explain on Schedule E).....
- (If the applicant imposes any limitations on the types of clients it will accept, explain on Schedule E.)

(ii)(a) Total number of accounts under discretionary management as of the end of the last fiscal year.

(b) Approximate aggregate market value of such accounts as of the end of the last fiscal year.

(iii) Approximate number of accounts under discretionary management in the following size categories as of the end of the last fiscal year:

- a) Less than \$10,000
- b) \$10,000 - \$50,000
- c) \$50,000 - \$200,000
- d) \$200,000 - \$500,000
- e) \$500,000 - \$1,000,000
- f) More than \$1,000,000

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the federal securities laws would violate each federal securities law and may result in disciplinary, administrative, injunctive or criminal action. VIOLATIONS OF THESE RULES MAY CONSTITUTE CRIMINAL VIOLATIONS.

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- 16.(i) Opposite each of the following types of clients for which the applicant generally provides account management or supervision on other than a discretionary basis place a numeral indicating its rank (largest = 1) according to the approximate dollar amount under management in each category as of the end of the applicant's last fiscal year. Omit any category where the dollar amount under management is less than (a) 10% of the amount stated in response to item (ii)(b) or (b) \$50,000, whichever is lesser.

- a) Individuals.....
- b) Registered Investment Companies.....
- c) Pension and profit-sharing plans.....
- d) Banks.....
- e) Charitable institutions.....
- f) Educational institutions.....
- g) Trust accounts.....
- h) Corporations.....
- i) Insurance companies.....
- j) Other (explain on Schedule E).....
(If the applicant imposes any limitations on the types of clients it will accept, explain on Schedule E.)

- (ii)(a) Total number of accounts under management or supervision on other than a discretionary basis as of the last fiscal year. _____

- (b) Approximate market value of such accounts as of end of the last fiscal year. _____

- (iii) Approximate number of such accounts in the following size categories as of the end of the last fiscal year:

- a) Less than \$10,000 _____
- b) \$10,000 - \$50,000 _____
- c) \$50,000 - \$200,000 _____
- d) \$200,000 - \$500,000 _____
- e) \$500,000 - \$1,000,000 _____
- f) More than \$1,000,000 _____

17. Every applicant not subject to the requirement of Part II - Item 13 shall provide on Schedule G a balance sheet as of the end of applicant's most recent fiscal year. The balance sheet need not be audited by an independent public accountant. The balance sheet shall be prepared in accordance with generally accepted accounting principles and shall show assets and liabilities related to the advisory business separately from other business and personal assets and liabilities. The statement shall be accompanied by a note stating the accounting principles and practices followed in its preparation; the basis at which securities are included and other notes as may be necessary for an understanding of the statement. If securities are included at cost, their market or fair value shall be shown parenthetically.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

FORM ADV

Part II

Page 1

Name of Investment Adviser:

Address:

(Number and Street)

(City)

(State)

(Zip Code)

Telephone Number:

(Area Code) (Number)

Part II of Form ADV, the application for registration as an investment adviser under the Investment Advisers Act of 1940, contains information relating to the investment adviser and the nature of his business. Items 1 through 4 relate to general information about the adviser's basic operations including the types of services offered and the fees charged, the types of clients advised, the types of investments generally recommended, the methods of analysis, the types of investment strategies employed, and the sources of information used by the adviser in formulating recommendations. Items 5 and 6 provide information concerning any educational and business standards applicable to persons associated with the adviser and the actual educational and business backgrounds of certain persons associated with the adviser. Items 7 through 9 contain information about other business activities of the adviser, other activities or affiliations of the adviser in the securities industry, and his participation in connection with securities transactions of clients. Items 10 through 12 provide additional information for clients whose accounts are managed by the adviser including conditions for managing investment advisory accounts, the nature of the adviser's discretionary authority, if any, with respect to clients' accounts, and the process of reviewing investment advisory accounts. Item 11 also contains information about brokerage placement practices of the adviser. Item 13 contains, for certain advisers, a certified balance sheet.

THE INFORMATION REGARDING THE INVESTMENT ADVISER CONTAINED IN PART II OF FORM ADV HAS NOT BEEN PASSED UPON OR APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON OR APPROVED THE QUALIFICATIONS OR BUSINESS PRACTICES OF THE INVESTMENT ADVISER DESCRIBED IN PART II.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

RULES AND REGULATIONS

FORM ADV

Part II

Page 2

1. Advisory Services and Fees. Does applicant:
- | | YES | NO |
|--|-----|-----|
| a) Furnish "investment supervisory services," defined as the giving of continuous advice to clients as to the investment of funds on the basis of individual needs of each client; e.g., the nature and amount of other assets, investments and insurance, and the nature and extent of the personal and family obligations of each client (distinguished from continuous advice of any nature which is not based on consideration of such relevant individual factors)? | ___ | ___ |
| b) Manage investment advisory accounts under circumstances not involving investment supervisory services? | ___ | ___ |
| c) Furnish investment advice through consultations (not as part of (a) or (b) above)? | ___ | ___ |
| d) Issue periodic publications relating to securities on a subscription basis? | ___ | ___ |
| e) Prepare or issue special reports or analyses relating to securities, not included in any service described above? | ___ | ___ |
| f) Prepare or issue, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities? | ___ | ___ |
| g) Furnish advice to clients on any matters not involving securities on other than an incidental basis? | ___ | ___ |
| h) Furnish investment advice in any manner not described above? | ___ | ___ |

In each case in which the answer to the preceding paragraphs is "yes," the applicant shall explain on Schedule F, including the basis or bases of compensation, e.g., a percentage of the assets under management, hourly charges, a fixed fee or an annual subscription fee in the case of a periodic publication, for the services which the investment adviser provides and the amounts charged, e.g., 1% per annum, (applicant's basic fee schedule and an indication that its fees are negotiable, if such is the case, would be an acceptable answer to this question) and when such compensation is payable. If such compensation is payable prior to the rendering of the services relating thereto, the applicant should explain to what extent and under what conditions such compensation is refundable.

In addition, those applicants who answered "yes" to questions (d) and (e) above should include the name of each publication or analysis issued on a regular basis and a general description of any special reports or analyses to be issued on an irregular basis.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTERFERING WITH INVESTIGATIONS OR DISSEMINATING OR FALSIFYING CRIMINAL VIOLATIONS.

FORM ADV

Part II

Page 3

The applicant should set forth the procedures and conditions, if any, pursuant to which the applicant or any client may terminate an investment advisory contract prior to the termination date set forth in the contract.

2. Types of Clients. List the type or types of clients for which the investment adviser generally provides investment advice, including but not limited to, individuals or specified classes of individuals, banks, investment companies and pension and profit-sharing plans.

3. Types of Securities. Check the types of securities concerning which the applicant generally provides investment advice:

- | | | |
|---|-----|-----|
| a) Equity securities | ___ | ___ |
| 1) exchange listed securities | ___ | ___ |
| 2) securities traded over-the-counter | ___ | ___ |
| b) Corporate debt securities | ___ | ___ |
| c) Warrants | ___ | ___ |
| d) Commercial paper | ___ | ___ |
| e) Bank certificates of deposit | ___ | ___ |
| f) Municipal securities | ___ | ___ |
| g) Investment company securities | ___ | ___ |
| 1) variable life insurance | ___ | ___ |
| 2) variable annuities | ___ | ___ |
| 3) mutual fund shares | ___ | ___ |
| h) United States government securities | ___ | ___ |
| i) Options contracts on | ___ | ___ |
| 1) securities | ___ | ___ |
| 2) commodities | ___ | ___ |
| j) Interests in partnerships investing in | ___ | ___ |
| 1) real estate | ___ | ___ |
| 2) oil and gas interests | ___ | ___ |
| 3) other (explain on Schedule F) | ___ | ___ |
| k) Other (explain on Schedule F) | ___ | ___ |

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal Securities Laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTERNATIONAL MISSTANTINING ON MISSING (F) IN ITS MAY CONSTITUTE CRIMINAL VIOLATIONS.

4. Methods of Analysis, Sources of Information, and Investment Strategies.

- a) Relate in a narrative fashion the applicant's method or methods of security analysis, e.g., fundamental analysis, technical analysis, cyclical analysis or charting.

RULES AND REGULATIONS

FORM ADV

Part II

Page 4

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, i.e., inactive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

- b) Relate in a narrative fashion the principal sources of information applicant uses, e.g., financial newspapers and magazines, company prepared information (i.e., annual reports, prospectuses, filings with the Commission, press releases), inspections of corporate activities, research materials prepared by others, or corporate rating services.
- c) Relate in a narrative fashion the types of investment strategies generally recommended or used to implement any investment advice rendered to clients, e.g., long term purchases (securities will be held at least one year except in unusual circumstances), short term purchases (securities will generally be sold within one year after purchase), trading (securities will generally be sold within 30 days after purchase), short sales, margin transactions, or option writing, including covered options, uncovered options, and spreading strategies.

5. Education and Business Standards. Are there any general standards of education and business background which applicant requires of persons associated with applicant (other than persons whose functions are solely clerical or ministerial) whose functions or duties relate to providing investment advice to clients?

<u>YES</u>	<u>NO</u>
—	—

If "yes," set forth below a brief description of such standards.

6. Education and Business Background.

- a) Applicant shall set forth the name, age, formal education after high school, and, for the preceding five years, the business background of each member of the investment adviser's investment committee or similar group, if any, which determines or approves what investment advice shall generally be rendered by the investment adviser to any client or to which client such investment advice shall be rendered.
- b) If applicant does not have an investment committee or similar committee, applicant shall set forth the name, age, formal education after high school, and, for the preceding five years, the business background of each person associated with the investment adviser who determines or approves what investment advice shall be rendered by the investment adviser (if more than five such persons, it shall be sufficient to limit this information to persons having supervisory responsibility over those persons described in this paragraph).

7. Other Business Activities.

- a) Is applicant engaged in any business or profession other than acting as an investment adviser?

<u>YES</u>	<u>NO</u>
—	—

FORM ADV

Part II

Page 5

- b) Does applicant offer or sell any type of product, other than securities, to clients?

YES NO

(If the answer to item (a) or (b) is "yes," describe briefly on Schedule F such other activities.)

- c) Is the principal business of applicant that of an investment adviser?

YES NO

8. Other Securities Industry Activities or Affiliations.

- a) Is applicant registered (or does applicant have an application for registration pending) as broker or dealer?

YES NO

- b) Is applicant affiliated with any broker, dealer, investment company or another investment adviser?

YES NO

(If "yes," state the nature of such affiliation and the business relationship, if any, between such entity and applicant on Schedule F.)

NOTE: Pursuant to Section 202(a)(12) of the Act [15 U.S.C. 80b-2(a)(12)], the term "affiliated person" has the same meaning as in Section 2(a)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(3)], which, as relevant, means

"(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, co-partner, or employee of such other person"

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the federal securities laws would violate such federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. (CRIMINAL PENALTIES OR FINES MAY CONSTITUTE CRIMINAL VIOLATIONS.)

FORM ADV

Part II

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9. Participation or Interest in Securities Transactions. Does applicant:

- (a) As principal, sell securities to or buy securities from any (investment advisory) client?

YES NO

— —

- (b) Effect securities transactions for compensation as broker or agent for any (investment advisory) client?

YES NO

— —

- (c) As broker or agent for any person other than a (investment advisory) client, sell securities to or buy securities from clients?

YES NO

— —

- (d) Recommend to (investment advisory) clients or prospective clients, the purchase or sale of securities in which the applicant, directly or indirectly, has a position or interest?

YES NO

— —

If the answer to any of the foregoing questions of item 9 is "yes," describe on Schedule F the circumstances in which the investment adviser engages in such transactions and any internal procedures the investment adviser has concerning conflicts of interest in such transactions.

- (e) Impose any restrictions upon itself or any person associated with it in connection with the purchase or sale, directly or indirectly, for its or their account of securities recommended to clients? (If the answer to this paragraph is "yes," describe such restrictions on Schedule F.)

YES NO

— —

If applicant provides investment supervisory services (as defined in Section 202(a)(13) of the Act [15 U.S.C. 80b-2(a)(13)]) or manages investment advisory accounts for clients under circumstances not involving investment supervisory services, answer items 10 through 12. If applicant does not provide any of the foregoing services, item 11 must, nevertheless, be answered if applicant determines or suggests the broker or dealer through which, or the commission rates at which security transactions for client accounts are effected.

- 10. Conditions for Managing Accounts.** Does applicant generally require a minimum dollar amount of assets for or generally impose any other conditions on the establishment or maintenance of an investment advisory account?

YES NO

— —

If "yes," describe such minimum and/or other conditions on Schedule F.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INFORMATIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

FORM ADV

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11. Investment or Brokerage Discretion. Does applicant or any person associated with applicant have discretionary authority to make any of the following determinations without obtaining the consent of the investment advisory client before the transactions are effected;

- | | | |
|---|------------|-----------|
| (a) Which securities are to be bought or sold? | <u>YES</u> | <u>NO</u> |
| | — | — |
| (b) The total amount of the securities to be bought or sold? | <u>YES</u> | <u>NO</u> |
| | — | — |
| (c) Through which broker or dealer securities are to be bought or sold? | <u>YES</u> | <u>NO</u> |
| | — | — |
| (d) The commission rates at which securities transactions for client accounts are effected? | <u>YES</u> | <u>NO</u> |
| | — | — |

If the answer to any question of Item 11 is "yes" and there are limitations on such authority, describe such limitations on Schedule F.

If applicant or any person associated with applicant determines or suggests the broker or brokers through whom, or the commission rates at which, securities transactions for client accounts are executed, describe on Schedule F how brokers will be selected to effect securities transactions and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including factors considered in these determinations. If the receipt of products or services other than brokerage or research services is such a factor, this description should specify them. If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services.

State on Schedule F if applicant may pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (a) brokerage or (b) research services provided by the broker.

If applicable, explain that research services furnished by brokers through whom applicant effects securities transactions may be used in servicing all of applicant's accounts and that not all such services may be used by applicant in connection with the accounts which paid commissions to the broker providing such services; or, if other policies or practices are applicable with respect to the allocation of research services provided by brokers, explain on Schedule F such policies and practices.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute such Federal securities law violations as may result in disciplinary, administrative, or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

FORM ADV

Part II

Page 8

If, during the last fiscal year, applicant, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed brokerage transactions to a broker or brokers because of research services provided, identify and briefly describe on Schedule such arrangements.

12. Review of Accounts.

- (a) Describe briefly on Schedule F the process pursuant to which the applicant reviews investment advisory accounts, including, but not limited to, the category of personnel performing the review, the frequency of review, the number of accounts assigned to account managers, factors which trigger reviews, the sequence in which accounts are reviewed and the matters reviewed.
- (b) State on Schedule F the general frequency and nature of any reports regularly furnished to clients concerning their investment advisory accounts.

13. Balance Sheet. Every applicant who has custody or possession of clients' funds or securities, or requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client shall provide on Schedule G a balance sheet as of the end of applicant's most recent fiscal year. The balance sheet shall be audited by an independent public accountant. The balance sheet shall be prepared in accordance with generally accepted accounting principles and shall show assets and liabilities related to the advisory business separately from other business and personal assets and liabilities. The statement shall be accompanied by a note stating the accounting principles and practices followed in its preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statement. If securities are included at cost, their market or fair value shall be shown parenthetically.
-
-

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

SCHEDULE A OF

(Answers in response to ITEM 8(a) of Part I of Form ADV or
Item 8(a) Form BD.)

III. Complete and mark appropriate columns for (a) each officer, director, and person with similar status or functions, and (b) each other person who is, directly or indirectly, the beneficial owner of 1% or more of the outstanding shares of any class of equity security of applicant unless applicant is the issuer of a security registered pursuant to Section 12 of the Securities Exchange Act of 1934 (or the issuer of a security which is exempted pursuant to Subsections (g)(2)(B) or (g)(2)(G) thereof) in which case each other person who is, directly or indirectly, the beneficial owner of 5% or more of any such registered class of equity security of applicant. Thus, if applicant is owned directly, or indirectly through one or more intermediaries, by a corporation, then such corporation's shareholders should be considered in determining who must be listed on Schedule A. Place an asterisk (*) after the names of the persons for whom a change in title, status, or stock ownership is being reported. Place a double asterisk (**) after the names of the persons which are ADDED to those furnished in the most recent previous filing. Designate percentage of ownership as follows: If none, enter "none," above 0% to less than 1%, enter "A," 1% to less than 5%, enter "B," 5% to less than 10%, enter "C," 10% to less than 25%, enter "D," 25% to less than 50%, enter "E," 50% to less than 75%, enter "F," 75% to 100%, enter "G."

FULL NAME			RELATIONSHIP		Official Use Only	Owner-ship Code	Class of Equity Security	Social Security Number
Last	First	Middle	Beginning Date	Title or Status				
					01			
					02			
					03			
					04			
					05			
					06			
					07			
					08			
					09			
					10			
					11			
					12			

RULES AND REGULATIONS

OFFICIAL USE

SCHEDULE A OF
 FORM ADV
 FORM BD

FOR CORPORATIONS

Page 2

IV. List below names reported in the most recent previous filing pursuant to this item which are DELETED hereby:

FULL NAME			ENDING DATE		SOCIAL SECURITY	OFFICIAL USE
Last	First	Middle	Mo.	Yr.	NUMBER	

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal tax laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INFORMATION MISSTATED OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

If any item on this page is amended, you must answer in full all other items on this page and file with a completed and signed execution page and Page 1 of Part I of the ADV form.

DO NOT WRITE BELOW THIS LINE ... OFFICIAL USE ONLY ...

—OFFICIAL USE

FORM ADV _____
 SCHEDULE B OF _____
 FORM BD _____

FOR PARTNERSHIPS
 (Answers in response to ITEM 8(b) of Part I of FORM ADV or
 ITEM 8(b) of FORM BD.)

Date as stated on the
 execution page of Form
 ADV or Form BD accompany-
 ing this Schedule:

I. Full name of applicant exactly as stated in _____ IRS EMPL. _____ OFFICIAL
 Item 2(a) of Form ADV or Form BD. Ident. No: USE

II. Name under which business is conducted if different: _____

III. List all general, limited, and special partners. For each partner, complete and
 mark appropriate columns below. Place an asterisk (*) after the names of persons
 which are ADDED to those furnished in the most recent previous filing. Designate
 percentage of capital contribution as follows: If none enter "none," above 0% to
 less than 1%, enter "A," 1% to less than 5% enter "B," 5% to less than 10%, enter
 "C," 10% to less than 25%, enter "D," 25% to less than 50%, enter "E," 50% to
 less than 75%, enter "F," 75% to 100%, enter "G."

FULL NAME			BEGINNING DATE		Type of Partner	OFFICIAL USE ONLY	Capital Contribution Code	Social Security Number
Last	First	Middle	Mo.	Yr.				

IV. List below names reported in the most recent previous filing pursuant to this
 item which are DELETED hereby:

FULL NAME			Ending Date		Social Security Number	OFFICIAL USE
Last	First	Middle	Mo.	Yr.		

If any item on this page is amended, you must answer in full all other items on this
 page and file with a completed and signed execution page and Page 1 of Part I of the
 ADV form.

DO NOT WRITE BELOW THIS LINE OFFICIAL USE ONLY ...

WARNING: Failure to keep this form current and failure to keep accurate books and records
 as required by the Federal securities laws would violate such federal securities laws
 and may result in disciplinary, administrative, injunctive or criminal action.
 INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

OFFICIAL USE

FORM ADV _____
 SCHEDULE C OF _____
 FORM BD _____

Date as stated on the
 execution page of Form
 ADV or FORM BD accompany-
 ing this Schedule:

FOR APPLICANTS OTHER THAN SOLE PROPRIETORS,
 PARTNERSHIPS AND CORPORATIONS

(Answers in response to ITEM 8(c) of Part I of FORM ADV or ITEM 8(c) of FORM BD.)

I. Full name of applicant exactly as stated in Item 2(a) IRS Empl. Ident. No:
 of Form ADV or Form BD:

II. Name under which business is conducted if different:

III. List below any person, including a trustee, who directs, manages, or participates in directing or managing the affairs of applicant. As to each person listed below, state his title or status and describe the nature of his authority and his beneficial interest in applicant. Place an asterisk (*) beside the names of persons for whom a change in title, status, or interest is being reported. Place a double asterisk (**) after the names of persons which are ADDED to those furnished in the most recent previous filing.

FULL NAME			Relationship		Social Security	Description of Authority and Beneficial Interest
Last	First	Middle	Beginning Date Mo. Yr.	Title or Status	Number	

IV. List below names reported in the most recent previous filing pursuant to this item which are DELETED hereby:

FULL NAME			Ending Date		Social Security	OFFICIAL USE
Last	First	Middle	Mo.	Yr.	Number	

If any item on this page is amended, you must answer in full all other items on this page and file with a completed and signed execution page and Page 1 of Part I of the ADV form.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action under the Federal securities laws. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

OFFICIAL USE

FORM ADV _____
SCHEDULE D OF _____
FORM BD _____
(Answers in response to ITEM 11 of Part I of FORM ADV or
ITEM 12 of FORM BD.)

Date as stated on the
execution page of
Form ADV or FORM BD
accompanying this
Schedule:

NOTE: (a) Complete a separate Schedule D for each natural person named in Items 2(a), 8 or 9 of Part I or any Schedule thereunder, except that Schedule D need not be furnished for any person who meets both of the following conditions: (1) he owns less than 10% of any class of equity security of applicant and (2) he is not an officer, director, or person with similar status or function.

- (b) Complete a separate Schedule D for each person subject to any action reported under Item 10 of Part I.
- (c) State all names in the order of last name, first name, full middle name. If any person legally has only an initial, so indicate after the initial.

- (d) Applicants who are completing Schedule D in response to Item 11 of Part I of Form ADV should also complete a separate schedule D for: (1) each member of applicant's investment committee or similar group, if any, which determines or approves what investment advice shall generally be rendered by applicant to any client, or to which clients such investment advice shall be rendered, or (2) in the absence of an investment committee or similar group, each person associated with applicant who determines or approves what investment advice shall be rendered by applicant to any client, or to which clients such investment advice shall be rendered (if more than five such persons, it is necessary to complete a separate Schedule D only for those persons having supervisory responsibility over those persons described in this paragraph).

I. Full name of applicant exactly as stated in Item 2(a) of Form ADV or Form BD: IRS Empl. Ident. No.:

II. Full name of person for whom this Schedule is being completed: IRS Empl. Ident. No. or Soc. Sec. No.:

III.(a) Residence address of person: (Number and Street, City, State, ZIP Code)

(b) Date of Birth: (c) City of Birth: (d) State or Province: (e) Country:

IV. NAMES USED: Furnish below a list of all names other than the name stated in Item II of this Schedule the individual has been known by or has used including maiden name if applicable. If no other names used, state "None."

(Last)

(First)

(Middle)

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

OFFICIAL USE

SCHEDULE D OF FORM ADV _____
FORM BD _____

Page 2

V. EDUCATION: Furnish below a description of the education for the person named in Item II of this Schedule (include name and location of last high school attended, name and location of any college or university attended, degree received and year it was received).

VI. BUSINESS BACKGROUND: Furnish below a complete consecutive statement of all business experience and employment for the past ten years. List the most recent position first. If none, state "None."

Name of Firm and Address	Kind of Business	Exact Nature of Connection or Employment	Beginning Date Mo. Yr.	Ending Date Mo. Yr.
-----------------------------	---------------------	--	---------------------------	------------------------

VII. PROCEEDINGS: If any answer to any paragraph of Item 10 is "Yes" with respect to the person for whom this Schedule is being completed, furnish the following details:

Applicable Part and Question of Item 10	Title or Description of Action	Name and Location of Court, Agency, Jurisdiction or Self-Regulatory Organization	Nature and Date of and Disposition of Proceeding
--	--------------------------------------	--	--

If any item on this page is amended, you must answer in full all other items on this page with a completed and signed execution page and Page 1 of Part I of the ADV form.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL VIOLATIONS OF DISCLOSURE OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

OFFICIAL USE

SCHEDULE E OF FORM ADV _____

(Continuation Sheet for Part I of Form ADV)

Date as stated on
the execution
page of Form ADV
accompanying this
Schedule:

(Do not use this Schedule as a continuation sheet for
Part II of Form ADV or Schedules A, B, C, and D.)

I. Full name of applicant exactly as stated in Item 2(a) of Part I of Form ADV: _____ IRS Empl. Ident. No.: _____

Item of Form
(identify)

Answer

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

If any item on this page is amended, you must answer in full all other items on this page and file with a completed and signed execution page and Page 1 of Part I of the ADV form.

OFFICIAL USESCHEDULE F OF FORM ADV

(Continuation Sheet for Part II of Form ADV)

Date as stated on
the execution
page of Form ADV
accompanying this
Schedule:(Do not use this Schedule as a continuation sheet for
Part I of Form ADV or Schedules A, B, C, and D.)I. Full name of applicant exactly as stated in Item 2(a)
of Part I of Form ADV:

IRS Empl. Ident. No.:

Item of Form
(identify)

Answer

WARNING: Failure to keep this form current and failure to keep accurate books and records
as required by the Federal securities laws would violate such Federal securities laws
and may result in disciplinary, administrative, injunctive or criminal action
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

If any item on this page is amended, you must answer in full all other items on this
page and file with a completed and signed execution page and Page 1 of Part I of the
ADV form.

OFFICIAL USE

SCHEDULE G OF FORM ADV

Date as given on the execution
page of the Form ADV accompany-
ing this Schedule.

(Answers in Response to Item 17 of Part I and Item 13 of Part II of Form ADV
and Item 4 of Form ADV-S)

1. Full name of applicant exactly as stated in Item 2(a) of Part I Form ADV: IRS Empl. Ident. No.:

WARNING: Failure to keep this form current and failure to keep accurate books and records
as required by the Federal securities laws would violate such Federal securities laws
and may result in disciplinary, administrative, injunctive or criminal action.
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

If any item on this page is amended, you must answer in full all other items on this
page and file with a completed and executed page and Page 1 of Part I of the ADV form.

RULES AND REGULATIONS.

FORM. ADV.

EXECUTION PAGE

SEC USE

File No.

801-

DOC. SEQ. NO.

EXECUTION: The applicant submitting this Form and its attachments and the person by whom it is executed represent hereby that all information contained therein is true, current and complete. It is understood that all required items and Schedules are considered integral parts of this form and that the submission of any amendment represents that all unamended items and Schedules remain true, current and complete as required.

Dated the _____ day of _____, 19__

(Name of Corporation, Partnership or other organization)

(Manual signature of Sole Proprietor, General Partner,
Managing Agent or Principal Officer)

(Title)

ATTENTION -- Intentional misstatements or omissions of
facts constitute Federal Criminal Violations.
(See 18 U.S.C. 1001 and 15 U.S.C. 80b-17)

DO NOT WRITE BELOW THIS LINE...FOR OFFICIAL USE ONLY

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would constitute Federal securities laws and may result in disciplinary, administrative, or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

FORM
ADV-S

ANNUAL SUPPLEMENT FOR INVESTMENT ADVISERS REGISTERED
UNDER THE INVESTMENT ADVISERS ACT OF 1940

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

GENERAL INSTRUCTIONS FOR PREPARING AND FILING FORM ADV-S

1. This form (or mechanical reproductions thereof) shall be completed and filed in triplicate with the Securities and Exchange Commission, Washington, D.C. 20549. Additional copies of this form are available at any office of the Commission.
2. Every investment adviser which is registered under the Act on the last day of its fiscal year is required to file Form ADV-S no later than 90 days after the end of registrant's fiscal year unless registrant's registration has been withdrawn, cancelled, or revoked prior to that date.
3. Failure to file Form ADV-S, in addition to constituting a violation of Rule 204-1(c) under the Act, will result in the taking of appropriate steps by the Commission to determine whether a registrant is still in existence and is still engaged in business as an investment adviser and may, therefore, lead the Commission to order cancellation of a registrant's registration, pursuant to Section 203(h) of the Act [15 U.S.C. 80b-3(h)].
4. Any registrant answering Item 2 in the negative which is not, to its knowledge, the subject of a pending Commission investigation or administrative proceeding, is strongly urged to withdraw from registration by filing a notice of withdrawal on Form ADV-W together with this form or as soon as possible thereafter. Otherwise, the Commission may order cancellation of Registrant's registration solely on the basis of registrant's response to Item 2 of this form. Copies of Form ADV-W may be obtained from any office of the Commission.
5. It is essential that, before answering Item 3, registrant carefully review its Form ADV which is currently on file with the Commission and the provisions of Rule 204-1 under the Act, which sets forth the circumstances in which amendments to Form ADV, the application for registration, are required to be filed. Any registrant which provides an affirmative answer to item 3(a) should file the required amendment(s) together with this form or as soon as possible thereafter. Failure to do so could result in appropriate enforcement action by the Commission. Copies of Form ADV may be obtained from any office of the Commission.

NOTE: A registrant which does not have a copy of its Form ADV which is currently on file with the Commission may inspect the form at the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. 20005 or the appropriate Regional Office, or may obtain a photocopy at a nominal charge from the Public Reference Section, Securities and Exchange Commission, Washington, D.C. 20549.

NOTE: Registrants have a continuing obligation to file any amendments to Form ADV within the time limits set forth in Rule 204-1 under the Act and should not postpone such filings until the filing of Form ADV-S. If the information in response to questions 1 or 2 of this form is different from similar information on Form ADV, registrant must also file an amendment to Form ADV. The filing of Form ADV-S does not relieve registrant from any requirement to amend Form ADV.

Page Two of FORM ADV-S

6. Item 4 is to remind registrant to file with the Commission on Schedule G of Form ADV a balance sheet as of the end of such registrant's most recent fiscal year. The balance sheet must meet the requirements of Item 17 of Part I or Item 13 of Part II of Form ADV.
7. If registrant uses a written disclosure statement other than Part II of Form ADV to satisfy the requirements of Rule 204-3 under the Act, Item 5 requires registrant to file with the Commission as part of Form ADV-S a copy of each disclosure statement delivered or offered to be delivered by registrant in the preceding fiscal year. Investment advisers who use only Part II of Form ADV as the written brochure statement request of Rule 204-3 need not file Part II.
8. UNDER SECTIONS 204 AND 211(a) OF THE INVESTMENT ADVISERS ACT OF 1940 AND THE RULES AND REGULATIONS THEREUNDER, THE COMMISSION IS AUTHORIZED TO SOLICIT THE INFORMATION REQUIRED BY THIS FORM FROM REGISTRANTS UNDER THE INVESTMENT ADVISERS ACT OF 1940. THE INFORMATION SPECIFIED BY THIS FORM (OTHER THAN SOCIAL SECURITY NUMBERS) MUST BE PROVIDED PRIOR TO PROCESSING OF THE FORM. DISCLOSURE OF SOCIAL SECURITY NUMBERS IS VOLUNTARY, BUT SOCIAL SECURITY NUMBERS WILL ASSIST THE COMMISSION IN IDENTIFYING REGISTRANTS AND, THEREFORE, IN PROMPTLY PROCESSING THE FORMS. THE INFORMATION WILL BE USED FOR THE PRINCIPAL PURPOSES OF DETERMINING WHETHER REGISTRANT IS PRESENTLY ENGAGED IN BUSINESS AS AN INVESTMENT ADVISER AND WHETHER ALL INFORMATION IN REGISTRANT'S FORM ADV IS CURRENT, AS WELL AS OTHER REGULATORY PURPOSES. INFORMATION SUPPLIED ON OR ENCLOSED WITH THIS FORM WILL BE INCLUDED IN THE PUBLIC FILES OF THE COMMISSION AND WILL BE AVAILABLE FOR INSPECTION BY ANY INTERESTED PERSON. A FORM WHICH IS NOT PREPARED AND EXECUTED IN COMPLIANCE WITH APPLICABLE REQUIREMENTS MAY BE RETURNED AS NOT ACCEPTABLE FOR FILING. ACCEPTANCE OF THIS FORM, HOWEVER, SHALL NOT CONSTITUTE ANY FINDING THAT IT HAS BEEN FILED AS REQUIRED OR THAT THE INFORMATION SUBMITTED IS TRUE, CURRENT, OR COMPLETE. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. (See 18 U.S.C. 1001 and 15 U.S.C. 80b-17.)

GENERAL: Read all instructions before preparing the form. Please print or type all responses.

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1. (a) Registrant's Investment Adviser File Number 801-

(b) Full name of registrant: (If individual, state last, first, middle name) IRS Empl. Ident. No.
or Soc. Sec. No.:

(c) Name under which business is conducted, if different:

(d) Address of principal place of business; (Do not use P.O. Box Number)

(No. Street) (City) (State) (ZIP Code)

(e) Mailing address, if different:

2. Is registrant presently engaged in business as an investment adviser? YES NO

3. (a) Is any amendment to registrant's Form ADV required to be filed pursuant to Rule 204-1 under the Act to correct any information contained in registrant's Form ADV currently on file with the Commission? YES NO

(b) If the answer to question 3(a) is "yes," state whether all required amendments are enclosed with this form. YES NO

4. Attach on Schedule G of Form ADV a balance sheet as of the end of registrant's most recent fiscal year, meeting the requirements of Item 17 of Part I or Item 13 of Part II of Form ADV.

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the Federal securities laws would violate such Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

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5. (a) In complying with Rule 204-3 under the Act, has registrant delivered or offered to deliver a written disclosure statement (other than in the form of Part II of Form ADV) during the preceding fiscal year of the registrant.

YES NO

- (b) If the answer to item 5(a) is "yes", attach a copy of each such form of written disclosure statement.

EXECUTION: The undersigned represents that he has executed this form on behalf of, and with the authority of, said registrant. The undersigned and registrant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Dated the _____ day of _____ 19____

(NAME OF REGISTRANT)

By: _____
(SIGNATURE AND TITLE)

WARNING: Failure to keep this form current and failure to keep accurate books and records as required by the federal securities laws would violate such federal securities law and may result in disciplinary, administrative, injunctive or criminal action. INADEQUATE DISCLOSURES OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

[FR Doc. 79-3904 Filed 2-7-79; 8:45 am]

WEDNESDAY, FEBRUARY 7, 1979

PART III



**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

Office of Education

■

**FINANCIAL ASSISTANCE
TO LOCAL EDUCATIONAL
AGENCIES TO MEET THE
SPECIAL EDUCATIONAL
NEEDS OF EDUCATION-
ALLY DEPRIVED AND
NEGLECTED AND
DELINQUENT CHILDREN**

PROPOSED RULES

[4110-02-M]

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 116 and 116a]

FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED AND NEGLECTED AND DELINQUENT CHILDREN

Evaluation Requirements

AGENCY: Office of Education, HEW.

ACTION: Proposed rule.

SUMMARY: The Commissioner of Education proposes amendments governing the administration of programs and projects authorized by Title I of the Elementary and Secondary Education Act of 1965. These regulations are required by the Education Amendments of 1974 and 1978. For projects conducted by local educational agencies (LEAs), the regulations provide evaluation standards and amend existing requirements governing evaluation frequency. The regulations also specify models for evaluating the effectiveness of LEA projects providing instructional services in reading, language arts, or mathematics.

DATES: Comments must be received on or before March 26, 1979.

Public meetings will be held on the following dates:

Boston, Massachusetts, March 9, 1979, 1-5 p.m. and 7-10 p.m.
Atlanta, Georgia, March 12, 1979, 1-5 p.m. and 7-10 p.m.
Kansas City, Missouri, March 14, 1979, 1-5 p.m. and 7-10 p.m.
San Francisco, California, March 16, 1979, 1-5 p.m. and 7-10 p.m.

ADDRESSES: Comments should be sent to Dr. Judith Burnes, Office of Evaluation and Dissemination, U.S. Office of Education, Room 3049, 400 Maryland Avenue, SW., Washington, D.C. 20202. Comments will be available for public inspection at the above address, between 8:30 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays. Both a partial preliminary draft of the evaluation section of a Title I Policy Manual and a report describing technical aspects of the models may be obtained by writing to the same address. The public meetings will be held at the following locations:

Boston, Massachusetts, Administration Building, Boston School Department, Boston Committee Hearing Room, 26 Court Street.
Atlanta, Georgia, Pryor Street Elementary School, School Auditorium, 200 Doane Street S.W.
Kansas City, Missouri, Board of Education Building, Auditorium, 1211 McGee Street.

San Francisco, California, Anza School, School Auditorium, 40 Vega Street.

FOR FURTHER INFORMATION CONTACT:

Dr. Judith Burnes, 202-245-8364.

SUPPLEMENTARY INFORMATION:

A. LEGISLATIVE BACKGROUND

Title I of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, provides financial assistance to local education agencies (LEAs) for programs to meet the special educational needs of educationally deprived children in areas with concentrations of children from low income families. Title I also provides funds to State educational agencies (SEAs) and other State agencies to meet the special educational needs of handicapped and neglected or delinquent children, including those in adult correctional institutions, and for educational programs for migratory children.

Section 124(g)(1) of Title I requires each LEA receiving a Title I grant to conduct an evaluation of the effectiveness of its program in meeting the special educational needs of educationally deprived children. Section 172 requires SEAs to report the results of the LEA evaluations to the Commissioner. Subsections (b) and (d) of section 183 extend these evaluation provisions by requiring that:

(b) The Commissioner shall (1) develop and publish standards for evaluation of program or project effectiveness in achieving the objectives of this title, and (2) develop, in consultation with State educational agencies, a schedule for conducting evaluations under Section 124(g) designed to ensure that evaluations are conducted in representative samples of the LEAs in any State each year . . .

(d) The Commissioner shall provide to State educational agencies, models for evaluations of all programs conducted under this title . . . which shall include uniform procedures and criteria to be utilized by local educational agencies, as well as by the State agency in the evaluation of such programs . . .

Section 183(f) further clarifies the nature of the Commissioner's obligation:

The models developed by the Commissioner shall specify objective criteria which shall be utilized in the evaluation of all programs and shall outline techniques . . . and methodology . . . for producing data which are comparable on a statewide and nationwide basis.

The Commissioner has developed three evaluation models which are intended to produce valid evaluations and yield nationally comparable data. These models apply to projects which are funded under Part A, Subpart 1 of Title I (Basic Grants to Local Educational Agencies) and which offer in-

struction in reading, language arts, or mathematics in grades 2 through 12. Work is currently under way to develop evaluation models for programs for migrants (authorized under section 141 of the Act), for children in State institutions for the neglected or delinquent (authorized under section 151 of the Act), and for preschool and early elementary school children.

B. SCOPE OF PROPOSED REGULATIONS

The proposed regulations address several evaluation requirements of Title I. They are primarily concerned with implementing the evaluation models and standards required by section 183. However, they also implement certain evaluation provisions of the Education Amendments of 1978 which apply to LEAs receiving grants under the Basic Grants Program. These evaluation requirements serve two purposes. At the local level, they provide LEAs with needed information about the effectiveness of their Title I projects. Summarized across LEAs, they are intended to provide State and Federal officials with a nationwide picture of the progress of Title I children. The proposed regulations are designed to ensure that technically sound and comparable evaluation data are available at the State and national level. A future revision of other parts of the Title I regulations will include requirements concerning the local use of evaluation data for program improvement.

In particular, the proposed regulations include:

(1) For all SEA Title I evaluation reports, a change in the deadline for submission; and for SEA reports concerning programs and projects funded under Part A, Subpart 1 (Basic Grants to Local Educational Agencies), a change in reporting frequency from an annual to a biennial requirement.

(2) For all LEAs funded under the Basic Grants Program, provisions specifying evaluation standards and indicating the frequency and duration of evaluations; and

(3) For LEAs funded under the Basic Grants Program and providing instruction in reading, language arts, or mathematics in grades 2 through 12, provisions prescribing models for evaluating project effectiveness.

C. DEVELOPMENT OF THE EVALUATION MODELS

In keeping with the requirements of section 183 (b) and (d), the models have been developed through a process that included extensive consultation with SEAs, LEAs, and other interested parties. First, Congressional and other Federal officials were interviewed concerning their information needs. Then, Title I personnel in all States and some territories were con-

tacted regarding methodological and practical issues in Title I evaluation.

Based on this information, preliminary models were developed. These models were then extensively reviewed and revised by experts in research methodology, Title I SEA personnel in all 57 States and territories, personnel from at least three LEAs in each State, and representatives of other groups concerned with Title I evaluation.

The models have been disseminated through a series of regional workshops and through the efforts of the Technical Assistance Center established in each HEW region (under contract to the Office of Education) to assist State and local educational agencies in implementing the models. Many LEAs are trying the models on a voluntary basis, with more than 50 percent of the Title I school districts in the country implementing one of the models in at least some schools during the 1978-79 school year.

The models reflect a compromise between technical rigor and feasibility for evaluating Title I projects. In their current form, they represent an improvement over the practices and procedures of many locally conducted Title I evaluations. Technical questions remain, however, and further exploration and analysis are required to arrive at the best possible answers. Examples of issues requiring further exploration are the extent to which the different models yield comparable data, and the best method for reporting evaluation results. These and other issues were discussed at a recent meeting with representatives of State Title I Coordinators and the Committee on Evaluation and Information Systems of the Council of Chief State School Officers. Work is already under way to address some of these issues. Additional work is being planned to investigate others.

D. REGULATIONS DEVELOPMENT

In order to provide State and Federal officials, and the Congress, with needed information about the success of Title I, the Commissioner proposes to publish regulations to implement section 183. As further technical analysis leads to refinements in either the models or the process for reporting evaluation results, revisions in these regulations may be necessary. It is the Commissioner's intent to reconsider, and if necessary, revise the regulations after a three year period, based on information available at that time. Representatives of State and local educational agencies will be invited to participate in this review. Any needed changes in the regulations will be made at that time.

In response to a request from Congress and the Chief State School Offi-

cers, a preliminary draft of the proposed regulations was sent for review to Title I personnel in all SEAs and LEAs receiving Title I funds. The proposed regulations reflect comments and suggestions made in response to this draft and to an earlier memorandum sent to each State requesting comments on several issues concerning section 183.

E. THE PROPOSED REGULATIONS

The proposed regulations amend Part 116a of Title I to include a new Subpart D, Evaluation. They also amend Part 116 of the Title I regulations by changing the frequency and deadline for the SEA evaluation report of LEA programs and projects.

In developing the proposed regulations, consideration was given to the question of the appropriate level of detail to be included. In responding to an earlier draft of the regulations, most State and local personnel indicated a preference for restricting the regulations to the major requirements of the models and technical standards, and for providing implementation details in a manual which would be updated as new information becomes available. Following this suggestion, the proposed regulations describe only the major requirements of the models and standards.

Guidance about alternative ways of implementing the regulations, including examples of appropriate solutions to typical problems, will be provided by an evaluation section of the Title I Policy Manual. This section of the manual will be concerned with appropriate sampling techniques, acceptable procedures for implementing model requirements, and other evaluation issues. A partial preliminary draft of the evaluation section is currently available and may be obtained from the address given above. A complete draft of the evaluation section will be available for review at the time of publication of final regulations.

Change in SEA reporting frequency and deadline. Many States find it difficult to report the results of Title I evaluations by November 15th, as required by 45 CFR 116.7 of the current regulations. To give the States more time, the proposed regulations change this reporting date to January 1 for all programs and projects funded under Title I. In order to reduce reporting burden, the frequency of SEA evaluation reporting is changed from an annual to a biennial requirement for those programs and projects funded under the LEA Basic Grants Program. However, the current annual requirement for a Financial Status and Performance Report is continued.

The technical standard. Section 183(b) requires the Commissioner to publish "standards for evaluation of

program or project effectiveness". Four standards have been selected:

(1) A requirement that evaluation participants (e.g., children, teachers, parents, schools, LEAs) be representative of those served by the program;

(2) A requirement that evaluation instruments and procedures be reliable and valid;

(3) A requirement that evaluation procedures be developed so that errors are minimized; and

(4) A requirement that valid measures be used to assess project effectiveness in reading, language art, and mathematics.

In the proposed regulations, the use of the term "standards" is not intended to imply that LEA evaluations must achieve a specific level for each standard in order to be acceptable. Rather, the standards represent a set of characteristics that all evaluations of Title I projects must strive to achieve.

Many factors will influence the extent to which a given LEA evaluation can achieve the goal implied by the standard. These include limited availability of instruments appropriate for some LEA populations and objectives, the likely impact of high attrition rates on the representativeness of the sample, and other factors.

The proposed regulations require the LEA to explain, in its application, how its evaluation plan addresses each of the standards. They also require the SEA to use the standards in judging the adequacy of the LEA's plan. Both the LEA in developing its plan, and the SEA, in judging it, will have to take into account the practical considerations which constrain the LEA's ability to adhere to a strict interpretation of the standards.

The development of an appropriate evaluation plan is not a guarantee that completely valid results will be obtained. In summarizing the results of local evaluations, SEA officials may decide to exclude some local data because of questionable validity. When this is necessary, the proposed regulations require the SEA to report the number of these eliminations and the reasons for their occurrence.

Scope of the evaluation models. Evaluation activities in Title I have several purposes. They include the assessment of the effectiveness of Title I services and the identification of individual project strengths and weaknesses for the purpose of project revision and improvement. Although the proposed models are concerned with only the most common Title I objectives, achievement gains in reading, language arts, and mathematics, State and local educational agencies are encouraged to evaluate all of their project objectives and to collect whatever data are needed for local decision making.

LEA evaluation model requirements. The proposed regulations state the requirements of the three models that may be used to evaluate Title I LEA projects providing services in reading, language arts, and mathematics in grades 2 through 12. The models describe basic evaluation designs for estimating the effects of participation in Title I projects. The effect of participation in the project (i.e., the Title I impact) is defined as the difference between the Title I children's performance on a test administered at the end of the project and an estimate of what that performance would have been if these children had not received Title I services ("expected performance").

The three models differ in how the estimate of expected performance is developed. Although certain procedures must be followed to make the estimate valid, the models are flexible in order to permit, as far as possible, local use of preferred tests, different scales, and the most appropriate test schedules.

The Norm-Referenced Model uses the currently popular evaluation strategy of pre- and post-testing the Title I children, and comparing their performance to the table of norms accompanying the test. In this model, expected performance is estimated by assuming that, without Title I services, the Title I children would maintain their percentile status relative to a national or local norm group from pretest to post-test.

Note.—Under certain conditions, it may be appropriate to assume that Title I children's percentile status would change—either up or down—relative to the norm group. This possibility will be discussed in the Policy Manual.

Norm-Referenced Model users may select any achievement test for which adequate normative data have been collected from representative samples drawn from national, State, or local populations. The amount of gain attributable to Title I is computed (using appropriated statistical procedures) by determining the pretest percentile status of the Title I children from the norms table and obtaining the expected performance from the post-test norms table, assuming the Title I children would maintain the same percentile status. The Title I impact is the difference between the observed post-test score and the expected performance.

The Comparison Group Model is the classical experimental design in which the performance of Title I children is compared to that of another group. Ideally, individual children should be randomly assigned to Title I and comparison groups. Because Title I services are provided to those children with the greatest need, the random as-

signment method is usually not possible.

However, the model can also be used where small differences which could affect the results are known or assumed to exist between the two groups. A pretest is given to both groups to determine the extent of the differences between them, and a statistical adjustment is made to compensate, as much as possible, for any inequality. Expected performance is determined by the post-test scores of the comparison group, assuming that this provides a good estimate of how much the Title I children would have scored had they not received Title I services. The Title I impact is the difference between the post-test scores of the two groups after any necessary adjustments are made.

The Comparison Group Model is often difficult to implement in Title I projects because of the problems encountered in obtaining suitable comparison groups. There are a few situations, however, where implementation is clearly feasible. For example, in projects that last half a school year or less, the pool of eligible children can be randomly assigned to sessions. Thus, children assigned to the second session can serve as comparisons for those currently receiving Title I services. A second situation in which this model is appropriate exists in large, homogeneous districts where schools not eligible to receive Title I funds are quite similar to those that do. In this case, students from the non-Title I schools may be used as a comparison group for the Title I evaluation.

In the Special Regression Model, a group of children is divided into Title I and comparison groups based on a pretest cutoff score. Title I services are provided to children scoring below the cutoff. Children scoring above the cutoff are the comparison group for the evaluation. Expected performance is estimated from the pretest and post-test scores of the comparison group by applying a statistical procedure known as the regression model. This model, when properly applied, will yield an estimate of expected performance that takes into account differences between the two groups that are not the result of Title I services.

Because the Special Regression Model requires pretesting and post-testing both Title I and comparison groups, it may be more easily implemented in situations where schoolwide or districtwide testing programs are also being conducted. Guidance about the appropriate size of Title I and comparison groups, as well as information about other implementation procedures for all of the models, will be provided in the Title I Policy Manual.

Alternative models. Although it is expected that at least one of the three

models will be appropriate for most Title I evaluations of reading, language arts, and mathematics in grades 2 through 12, some local educational agencies may wish to use an alternative model. An alternative model would use a different strategy for estimating the expected performance of Title I children than is used by any of the three models.

Reactions to an earlier draft of the regulations indicated that a majority of commentators felt that both State and Federal approval of alternatives should be required before their use, although some commentators felt that State approval would be sufficient. The proposed regulations require the approval of both the SEA and the Commissioner. The Commissioner is required to respond in writing to a proposal for an alternative model within 30 days of its receipt.

LEA evaluation frequency. Section 124 of Title I, as amended by the Education Amendments of 1978, contains two evaluation requirements. Each LEA must evaluate the effectiveness of its Title I projects at least once every three years, in accordance with a schedule established by the Commissioner. This amended requirement represents a reduction in the data collection burden imposed on LEAs receiving Title I funds. However, to ensure that results from a representative sample of LEAs within a State are available each year, LEA evaluations must occur according to a schedule established by the Commissioner. The results of these evaluations are reported to the SEA, which in turn, reports Statewide results from the LEA program to the Commissioner on a biennial basis.

In evaluations conducted according to the established schedule, the proposed regulations permit the LEA to measure achievement gains over a period of approximately either nine or twelve months. This would permit the LEA to use any one of several testing cycles, including fall to fall testing, fall to spring testing, and spring to spring testing.

The proposed regulations also require the LEA to collect additional information to determine whether the achievement gains measured over nine or twelve months are sustained over a longer period of time. Information obtained from this long term evaluation is to be used at the local level to determine whether achievement gains of Title I children are sustained beyond the school year in which the project is conducted. Section 124(k) of the Education Amendments of 1978 requires LEAs to consider these long term benefits in planning subsequent Title I projects. The LEA is not required to report the results of long term evaluations to the SEA. Similarly, the SEA is

not required to report long term results to the Commissioner.

The LEA may use any one of several ways of conducting the long term evaluation. For example, an LEA evaluating its project over a nine month period by testing the same children from fall to spring could satisfy the long term requirement by testing again the following fall or at any subsequent point during the three year period. An LEA using a twelve month testing cycle, for example, a spring to spring cycle, could satisfy the long term requirement by testing the same children the following fall or at any subsequent point during the three years.

The LEA may, of course, evaluate its projects more frequently than is required by the proposed regulations to meet information needs for local decision making. The long term assessment does not necessarily have to follow the Commissioner's schedule, but must occur at some point during each three year period.

The common reporting metric. Section 183(f) requires the models developed by the Commissioner to yield data which are comparable on a Statewide and nationwide basis so that a national summary of Title I progress may be obtained. One way of achieving comparability would be to require each LEA to administer a single test or one of a prescribed set of comparable tests. However, given the variety of services, children, and situations included in Title I, it is not appropriate to mandate a single set of tests.

To avoid this, while still meeting the comparability requirements of section 183, a procedure has been developed for summarizing evaluations using different tests by statistically converting the results to a common form, called the common reporting metric. This common metric allows local achievement gains from different tests to be expressed in a nationally comparable way.

The proposed regulations permit the LEA to use either a nationally normed test, or a test without national norms, with any of the evaluation models. If a test without national norms is used, the LEA must also obtain the information needed to convert the evaluation results to the common reporting metric. The Policy Manual will describe several procedures for making these conversions.

LEA reporting requirements. For local evaluation purposes, the LEA may use any one of several scales (e.g., percentiles, or standard scores) in reporting its results to interested parties. However, the results must eventually be converted to the common reporting metric. The proposed regulations permit this conversion to be done by the LEA, or with the prior permis-

sion of the SEA, the LEA may submit the necessary information to the SEA, which will then make the conversion.

The proposed regulations require the LEA to retain all the data used to develop its report to the SEA for a period of five years from the date of the report or until any pending Federal audit has been resolved. A record of individual scores must be kept, although it is not necessary to keep test booklets. Also, although pre- and post-test scores must be kept with an identifying code to be matched at a later date, it is not necessary to keep scores identified by individual child name.

SEA reporting requirements. Section 183(b) requires the Commissioner to develop a schedule of evaluations designed to ensure that a representative sample of LEA evaluations are conducted in each State each year. After consulting with representatives of State and local educational agencies, the Commissioner will develop a procedure for implementing this provision, including a schedule and criteria for sampling LEAs. The proposed regulations require the SEA to submit a proposed sampling plan reflecting the Commissioner's schedule and criteria, for the Commissioner's approval.

Based on reports submitted by SEAs, the Commissioner will prepare a report for Congress summarizing the progress of the Title I program nationwide. The proposed regulations describe the types of data that must be provided by the SEA to the Commissioner. The required data relate to two information needs at the national level. To provide nationwide information about the recipients of Title I services and the types of services delivered, SEAs are required to include descriptive information about their projects. The proposed regulations continue the requirement for this type of information in the annual Performance Report.

In addition, to provide nationwide information about the effectiveness of Title I projects offering instructional services in reading, language arts, or mathematics in grades 2 through 12, the SEA must provide an evaluation report containing information about project effectiveness, expressed in the common reporting metric. Project effectiveness data must be reported by grade level, hours of project exposure, pupil per instructor ratio, and project enrollment.

To reduce reporting burden, the proposed regulations change the SEA evaluation report for LEA programs from an annual to a biennial requirement. In addition, a State reporting form is being developed for this biennial report. In the years that this report is due, it will be consolidated with the currently required Performance Report.

Some commentors to the earlier draft regulations requested clarification of how specific variables were to be measured. As a first step in developing the State reporting form, regional workshop sessions will be held for SEA officials. Appropriate definitions of the reporting variables will be discussed and developed at these sessions. The form will then be subject to the Office of Management and Budget forms clearance procedures. As part of this process, the reporting requirements will be published in the *FEDERAL REGISTER* for public comment. Additional clarifications concerning the definitions will be included in the Policy Manual.

Allowable costs. In the past, it has been the policy of the Office of Education that Title I funds may not be used to pay for the costs of testing children not receiving Title I services. However, two of the three proposed models require testing of non-Title I children for comparison purposes. To meet the requirements of these models, the proposed regulations would change the current policy to permit Title I funds to pay for the testing of non-Title I children. Title I funds may be used for this purpose only if information meeting model requirements is not already available through, for example, a districtwide testing program.

The proposed regulations continue the current policy that Title I funds may not be used for research and development activities. For example, the use of Title I funds for test development and field testing is not permitted. Title I funds may be used, however, for the development of reporting forms that are needed to collect achievement data or other similar information about the project.

(Catalog of Federal Domestic Assistance Number 13.428, Educationally Deprived Children—Local Educational Agencies)

Dated: November 8, 1979.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: January 22, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health,
Education, and Welfare.

Accordingly, § 116.7(a) of Title 45 of the Code of Federal Regulations is amended to read as follows:

§ 116.7 Reports by State educational agencies.

(a) *State educational agency evaluation reports.* The SEA shall submit to the Commissioner a report evaluating the effectiveness of Title I programs and projects in meeting the special educational needs of participating children. This report must contain information about programs and pro-

jects conducted during the school year preceding the deadline for the report.

(1) For programs and projects authorized by Part B, Subparts 1, 2, and 3 (Programs for Migratory Children, for Handicapped Children, and for Neglected or Delinquent Children), this report is due on January 1 of each year.

(2) For programs and projects authorized by Part A, Subpart 1 (Basic Grants to Local Educational Agencies), this report is due on January 1, 1981 and January 1 of every alternate year thereafter. In addition, the SEA shall submit, along with its evaluation report, the evaluation reports of two applicant agencies under Part A; Subpart 1 (Basic Grants to Local Educational Agencies), including one from an LEA whose allocation for the current fiscal year is among the five highest in the State.

Part 116a of Title 45 of the Code of Federal Regulations is amended by adding a new subpart D to read as follows:

Subpart D—Evaluation

Sec.

- 116a.30 Technical standards.
- 116a.31 Local educational agency evaluation models.
- 116a.32 Frequency of local educational agency evaluations.
- 116a.33 Local educational agency reporting.
- 116a.34 State educational agency reporting.
- 116a.35 Allowable costs.

Subpart D—Evaluation

§ 116a.30 Technical standards.

Each local educational agency (LEA) shall explain in its application how its evaluation plan (required by § 116a.22(b)(3)) is consistent with the following technical standards. The State educational agency (SEA) shall use these same standards in determining the adequacy of the LEA's plan.

(a) *Representativeness of evaluation findings.* The evaluation results must be computed so that the conclusions apply to the persons, schools or agencies served by Title I. This may be accomplished by including in the evaluation sample either all, or a representative sample of the persons, schools, or agencies served by the project.

(b) *Reliability and validity of evaluation instruments and procedures.* The proposed evaluation instruments must consistently and accurately measure the accomplishment of project objectives, and must be appropriate, considering factors such as the age or background of the persons served by the project.

(c) *Evaluation procedures that minimize error.* The proposed evaluation

procedures must minimize error by including proper administration of the evaluation instruments, accurate scoring and transcription of results, and use of analysis procedures whose assumptions apply to the data obtained from the evaluation.

(d) *Valid assessment of achievement gains in reading, language arts, and mathematics.* In assessing the effectiveness of Title I reading, language arts, and mathematics projects in grades 2 through 12, the proposed evaluation procedures must yield a valid measure of the Title I children's performance after receiving Title I services, compared to an estimate of what their performance would have been in the absence of Title I services.

(Section 183 of the Elementary and Secondary Education Act as amended by the Education Amendments of 1978)

§ 116a.31 Local educational agency evaluation models.

(a) Each LEA shall use one of the following models, or an approved alternative, in the evaluation of each Title I project which provides instructional services in reading, language arts, or mathematics, in grades 2 through 12. The models require the administration of a test before or at the beginning of services for the project period (pretest) and after or at the end of the project period (post-test). Examples of appropriate pre- and post-test periods include fall to fall testing, fall to spring testing, and spring to spring testing.

(b) The models compare the post-test scores of Title I children to an estimate of what their post-test scores would be if they had not received Title I services ("expected performance"). Each model provides a different method for estimating expected performance using the scores of children not receiving Title I services who are tested at the same time of year. With any of the three models, the LEA may use a test with or without national norms.

(1) *Norm-Referenced Model.* An LEA using the Norm-Referenced Model shall:

(i) Administer a pre- and post-test to Title I children.

(ii) Estimate expected performance using the performance of children in a norm sample developed either locally, by the SEA, or by a test publisher.

(2) *Comparison Group Model.* An LEA using the Comparison Group Model shall:

(i) Identify a comparison group of educationally disadvantaged children who are similar to Title I children on educationally relevant criteria (such as age, socioeconomic status, and previous achievement), and who are not receiving Title I or other similar compensatory education services.

(ii) Administer a pre- and post-test to both the Title I children and the children in the comparison group.

(iii) Estimate expected performance using the test scores of the children in the comparison group.

(3) *Special Regression Model.* An LEA using the Special Regression Model shall:

(i) Administer a pretest to a group of children in Title I eligible schools at grade levels to be served by Title I.

(ii) Establish a cutoff score and provide Title I services to those children scoring below the cutoff. Children scoring above the cutoff are the comparison group for the evaluation.

(iii) Administer a post-test to both groups and estimate expected performance using the pre- and post-test scores for the comparison group.

(4) *Alternative models.* (i) An LEA may use an alternative to one of the three models for the evaluation of reading, language arts, or mathematics projects in grades 2 through 12. An alternative model would provide a method for estimating expected performance that differs from those provided by the three models. However, use of an alternative model must be approved first by the SEA and then by the Commissioner. To be approved, an alternative model must yield a valid measure of:

(A) The title I children's performance in reading, language arts or mathematics;

(B) Their expected performance; and

(C) The results of the Title I project expressed in the common reporting metric established by the Commissioner for SEA reporting (see § 116.34(b)(5)).

(ii) An LEA (or an SEA acting at the request of one or more LEAs) may submit a proposal requesting the Commissioner's approval of an alternative model, once it has been approved by the SEA. The proposal must indicate how the alternative model meets the three requirements. The Commissioner shall respond to the proposal in writing within 30 days.

(Section 183 of the Elementary and Secondary Education Act as amended by the Education Amendments of 1978)

§ 116a.32 Frequency of local educational agency evaluations.

Each LEA shall evaluate the effectiveness of its Title I projects at least once every three years, in accordance with a schedule established by the Commissioner. This evaluation must include an assessment of achievement gains of Title I children compared to an estimate of their expected performance in the absence of Title I services. The achievement gains must be measured over a period of approximately either nine or twelve months. (Exam-

ples of appropriate testing intervals include fall to fall testing, fall to spring testing, and spring to spring testing.) Also, at least once during the three year period, the LEA shall collect additional information needed to determine whether achievement gains measured over nine or twelve months are sustained over a longer period of time. (Examples at appropriate testing cycles for determining whether gains are sustained include fall-spring-fall testing, fall-fall-fall testing, spring-fall-spring testing, and spring-spring-spring testing.)

(Section 124 of the Elementary and Secondary Education Act as amended by the Education Amendments of 1978)

§ 116a.33 Local educational agency reporting.

(a) Each LEA shall report to the SEA the results of its evaluations conducted in accordance with the schedule established by the Commissioner. In reporting the results of measurements of educational achievement in reading, language arts, or mathematics in grades 2 through 12, the LEA shall use the common reporting metric established by the Commissioner unless the SEA approves some other form of local reporting. If the SEA approves another form of reporting, the LEA shall include sufficient information to enable the SEA to convert the achievement results to the common metric.

(b) The LEA shall retain all of the data used to develop its report to the SEA for a period of five years from the date of the report or until any pending Federal audit has been resolved. The data kept must include a record of all individual scores (with an identifying code so that pre- and post-test scores can be matched) in reading, language arts, or mathematics in grades 2 through 12, obtained as part of the project evaluation, and the name, form, and level of any tests administered.

(Section 183 of the Elementary and Secondary Education Act as amended by the Education Amendments of 1978)

§ 116a.34 State educational agency reporting.

(a) Each SEA shall submit, for the approval of the Commissioner, a proposed sampling plan designed to ensure that a representative sample of LEA evaluations are conducted in any school year. The proposed plan shall be developed according to the schedule and criteria specified by the Commissioner.

(b) To provide nationwide information about the recipients of Title I services and the types of services delivered, the SEA shall provide the following information, in its annual Performance Report, for all or a representative sample of LEAs:

(1) For regular school year or summer projects, the number of Title I participants by type of services received;

(2) For regular school year or summer projects, the number of participants, by grade, who attend public schools;

(3) For regular school year or summer projects, the number of participants, by grade, who attend non-public schools; and

(4) Other information requested by the Commissioner. For example, information about Parent Advisory Councils and teacher training may be requested.

(c) To provide nationwide information about the effectiveness of regular school year projects offering instructional services in reading, language arts, or mathematics in grades 2 through 12, the SEA shall include in its biennial evaluation report (required by § 116.7(a)(2)) the following information for all or a representative sample of LEAs:

(1) A Statewide average, by grade level, of achievement scores resulting from Title I participation, expressed in the common reporting metric established by the Commissioner;

(2) Information by grade level, relating project levels of achievement gain to the number of hours of project exposure, the pupil per instructor ratio and project enrollment; and

(3) If applicable, the number of projects excluded because of erroneous or

missing data and the reasons for their exclusion.

(d) The SEA shall retain all the data used to develop its report for a period of five years from the date of the report or until any pending Federal audit has been resolved.

(Sections 172 and 183 of the Elementary and Secondary Education Act as amended by the Education Amendments of 1978; 45 CFR 74.82)

§ 116a.35 Allowable costs.

(a) Title I funds may be used for evaluation activities needed to identify specific project strengths and weaknesses, to determine project results, and to disseminate the results of Title I evaluations. In addition to the requirements of §§ 116.40, 116a.22(b)(4) (ii) and (iii), and Appendix B of 45 CFR 100b, the following rules apply to the use of Title I funds to support the purchase, administration, scoring and analysis of evaluation instruments. Except where data meeting these needs are already available, Title I funds may be used:

(1) To support the testing of Title I participants for evaluation purposes.

(2) In the Comparison Group Model, to test educationally disadvantaged children who are at the same grade level(s) as Title I participants, but who are not receiving Title I services.

(3) In the Special Regression Model, to test children in Title I eligible schools who are at the grade levels served by Title I.

(4) To administer a nationally normed test to all, or a representative sample of, the Title I participants to permit conversion of the evaluation results to the common reporting metric when a test without national norms has been used for evaluation purposes.

(b) Title I funds may not be used for general districtwide or Statewide testing programs, for establishing local or State norms, or for research and development activities, such as the development and field testing of new instruments.

(Section 183 of the Elementary and Secondary Education Act as amended by the Education Amendments of 1978)

[FR Doc. 79-4055 Filed 2-6-79; 8:45 am]

WEDNESDAY, FEBRUARY 7, 1979

PART IV



**DEPARTMENT OF
ENERGY**

**Office of Hearings
and Appeals**



**ADMINISTRATIVE
PROCEDURES
REGARDING ISSUANCE
OF
REMEDIAL ORDERS**

Amendments; Final Rule

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Amendments to Administrative Procedures Regarding Issuance of Remedial Orders

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Final rule.

SUMMARY: This rule adopts amendments to the Department of Energy's (DOE) administrative procedure regulations regarding the issuance of Remedial Orders. The amendments separate prosecutorial and adjudicatory functions and provide a more complete administrative review of the issues raised in each Remedial Order proceeding prior to issuance of the order in final form. After issuance of a Proposed Remedial Order, aggrieved or interested persons will be able to submit written comments and relevant evidence prior to issuance of the order in final form. The Office of Hearings and Appeals will convene evidentiary hearings when they are appropriate and will provide an opportunity for oral argument to all participants as a matter of right. The revised procedures will also apply to Remedial Orders for Immediate Compliance and Orders of Disallowance.

EFFECTIVE DATE: February 7, 1979, with respect to all proceedings involving Proposed Remedial Orders issued on or after that date. The Interim Regulations published in 43 FR 3995 (January 31, 1978) will apply to proceedings involving previously issued Proposed Remedial Orders.

FOR FURTHER INFORMATION CONTACT:

George B. Breznay, Deputy Director, Office of Hearings and Appeals, Department of Energy, 2000 M Street NW., Washington, D.C. 20461, Telephone: (202) 254-9681.

James A. Williamson, Jr., Attorney, Office of Hearings and Appeals, Department of Energy, 2000 M Street NW., Washington, D.C. 20461, Telephone: (202) 254-8617.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Discussion of Comments.
- III. Additional Changes.

I. BACKGROUND

On January 13, 1978, the DOE issued an Interim Rule amending 10 CFR, Part 205, Subpart O of the procedural regulations which govern the issuance of Remedial Orders, Orders of Disallowance, and Remedial Orders for Immediate Compliance. 43 FR 1930, reprinted with corrections in 43 FR 3995 (January 31, 1978). That Notice invited interested persons to submit written comments by February 15, 1978. The DOE received a number of comments requesting an opportunity for oral presentations and additional time for written comments. Although neither Section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191, nor Section 4 of the Administrative Procedure Act, 5 U.S.C. 553, requires a public hearing for procedural rules of this nature, the DOE held a public hearing on May 3, 1978, to receive oral testimony with respect to the interim regulations. The March 29, 1978 Notice concerning the hearing also further extended the deadline for submitting written comments to May 10, 1978 (43 FR 13073). Four petroleum firms and two industry associations presented oral statements at the public hearing. In addition, a total of 22 petroleum firms, 6 industry groups, 2 law firms and a committee of lawyers submitted substantive written comments with regard to the interim regulations.

The DOE has considered all comments and has incorporated many of the suggested changes in the final Remedial Order regulations. The final regulations generally duplicate the interim rule published on January 13, 1978. Therefore, except for the modifications indicated below, we have incorporated into this Notice by reference the findings and analysis set forth in the Notice of Interim Rulemaking. 43 FR 1930 (January 13, 1978), reprinted in 43 FR 3995 (January 31, 1978).

II. DISCUSSION OF COMMENTS

Many of the initial comments objected to adjudicatory decision regarding Remedial Orders being made by a unit that reported to the same official who had direct responsibility for the prosecutorial aspects of the proceeding. The creation of a new Office of Hearings and Appeals on March 30, 1978, rendered this objection moot. This Office assumed the functions of the prior Office of Administrative Review of the Economic Regulatory Administration (ERA), but its duties are broader in scope, and it reports directly to the Office of the Secretary. DOE Order 1100.3 (September 15, 1978, effective as of March 30, 1978). In addition, to further separate prosecutorial and adjudicatory functions we have strengthened the rule against ex

parte communications, as discussed below. 10 CFR 205.199F.

Of the 31 commenters, 19 requested that a firm have additional time to respond to a Notice of Probable Violation. We adopted that suggestion and extended the 10-day response period in § 205.191 to 30 days. This change will also satisfy some of the objections of 12 commenters who sought a relaxation of the doctrine set forth in *Tenneco Oil Company*, 1 DOE Par. 82,512 at 85,043-44 (1977). These commenters noted that it was infeasible for a firm that had received a Notice of Probable Violation (NOPV) to consider and raise all issues relevant to that document within a 10-day period. The DOE will grant further extensions when the factual setting or legal issues involved in a particular case are complex. The DOE has retained, however, the requirement that the reply to the NOPV include both a statement of all relevant facts and also the legal justification for the act or transaction, since a meaningful dialogue between DOE enforcement officials and the firms at this point will contribute to prompt, effective resolution of the issues at an early stage. 10 CFR 205.191(c). Unless good cause is shown for failure to raise an issue that was not raised in the reply to an NOPV the Office of Hearings and Appeals will decline to consider that issue. 10 CFR 205.191(c). Similarly, with respect to motions for an evidentiary hearing, a movant must describe why a disputed or additional finding of fact was not raised in any prior administrative proceeding which led to the issuance of the Proposed Remedial order. 10 CFR 205.199(b).

Eighteen commenters requested clarification of the regulations with regard to burden of proof. In response, the DOE has added a new § 205.192A, which provides that the DOE office that issued the proposed order must establish a *prima facie* case. A *prima facie* case is deemed to be made by submission of a Proposed Remedial Order that Meets the requirements listed in § 205.192(d) and any supplemental information that ERA may decide to serve within 20 days after service of a Notice of Objection pursuant to a new section, 10 CFR 205.193A. Each Proposed Remedial Order must now include a declaration by a DOE employee knowledgeable about the facts of the case that the findings of fact are correct to the best of his knowledge and belief. 10 CFR 205.192(d). Of course any participant in an enforcement proceeding may still argue that the Proposed Remedial Order and supporting documents do not as a matter of law establish a basis for finding that a violation of the DOE regulations has occurred. It should also be noted that ERA's submission of supplemental information

pursuant to Section 205.193A does not limit ERA's rights pursuant to this Subpart to submit additional material at a later stage of the enforcement proceeding.

The person to whom a Proposed Remedial Order is directed, or a person advancing new evidence or objections to a DOE proposed order, has the burden of going forward with the evidence in response to a *prima facie* case. The DOE Office that proposed the order has the ultimate burden of persuasion with respect to the proceeding as a whole. Similarly, a movant or proposer of additional facts has the ultimate burden of persuasion with regard to the motion or additional facts.

Seven commenters stated that the rule with respect to *ex parte* communications required more rigorous provisions. Accordingly, § 205.199F now requires that any *ex parte* communication received by an Office of Hearings and Appeals employee, another government employee supervised by the Office of Hearings and Appeals, or a consultant to the Office of Hearings and Appeals shall be made public. In addition, the office shall serve, or direct the participant involved to serve, copies of the communication upon all persons on the official service list. The Office of Hearings and Appeals may also take any other appropriate action to mitigate the effects of an *ex parte* contact.

Seven commenters requested that Administrative Law Judges preside at all evidentiary hearings convened by the Office of Hearings and Appeals. The DOE disagrees with this suggestion. The DOE, other than the Federal Energy Regulatory Commission (FERC), is not subject to the provisions of the Administrative Procedure Act which require that Administrative Law Judges be utilized in connection with adjudicatory matters. The present personnel of the Office of Hearings and Appeals comprise an interdisciplinary staff of attorneys, accountants, economists and financial analysts. These individuals have developed considerable expertise in energy matters, and possess the qualifications necessary to preside at hearings and rule upon other aspects of Proposed Remedial Order proceedings.

Some commenters stated that the regulations should include detailed rules of evidence. That suggestion as well has not been adopted. Detailed rules of evidence are generally designed to insulate a jury of laymen from prejudicial evidence. That rationale does not apply in a hearing before the Office of Hearings and Appeals, and the Office intends to maintain flexible procedures that allow the presentation and inclusion in the record of relevant and material evi-

dence. Of course, appropriate weight will be given to the nature of the evidence presented.

Six commenters objected to provisions that limited evidentiary hearings to those cases in which an asserted position could "only" be established through the introduction of evidence at an evidentiary hearing rather than through the submission of documents and affidavits. While the Office of Hearings and Appeals generally favors the submission of written material since this is the most expeditious method of presenting evidence, it recognizes that evidentiary hearings can be more effective. Therefore, it has modified the regulations to state that evidentiary hearings will be convened whenever there is a genuine dispute over relevant and material issues of fact that would be more effectively resolved by personal presentation with opportunity for cross-examination. 10 CFR 205.199(b)(3), formerly § 205.196. The Office of Hearings and Appeals recognizes that convening evidentiary hearings in Washington, D.C., at the request of firms that are not located there can cause considerable inconvenience and expense. Therefore, when appropriate the Office of Hearings and Appeals will convene evidentiary hearings in the district where the firm that requested the hearing is located.

One commenter stressed that confidential material such as trade secrets and financial data should be protected during discovery. Under the FERC regulations all participants in an appeal proceeding may have access to all confidential data in the record, if they agree that they will not use or disclose any of the data except in the proceeding and will return all copies of the data after the proceeding has concluded. FERC Rules of Practice and Procedure, 18 CFR 1.38(c)(7), 43 FR 52224 (November 9, 1978). In response to the concern expressed in the comment, a new § 205.198A has been added, entitled "Protective Order." Under that provision, a person desiring confidential information with regard to a particular Proposed Remedial Order proceeding must first attempt to obtain the information from the firm informally. If no satisfactory response is obtained within a reasonable period of time—normally ten days—the requestor may file a Motion for Discovery and Protective Order, which must meet all the requirements of a Motion for Discovery. The possessor of the information may file a Response within ten days. If the Office of Hearings and Appeals grants the Motion for Discovery and Protective Order, it will establish specific requirements to restrict the use of the confidential data and to prevent, and impose sanctions for, unauthorized disclosure.

III. ADDITIONAL CHANGES

As a result of experience gained through conducting proceedings under the interim regulations, we have added two new sections to clarify practices that are currently handled on a case-by-case basis. Section 205.194, "Participants; Official Service List," provides a procedure for clearly identifying interested persons and ensuring that they are included on a service list. It specifies that a summary of a Notice of Objection will be published in the *FEDERAL REGISTER* together with an invitation to persons with an interest that may be affected by the proceeding to file a request to participate in that proceeding. All persons, regardless of whether they filed or were served with a Notice of Objection, may request an opportunity to participate in the adjudicatory proceeding. Each request shall specify the person's interest in the proceeding, the general position he intends to advance in the proceeding, and the particular aspects of the proceeding in which he desires to participate. The Office of Hearings and Appeals will evaluate the requests and issue an official service list, which will then be used for all filings in that proceeding. In determining which requests to participate will be granted, the Office of Hearings and Appeals will endeavor to ensure that all interests are represented without unduly delaying the proceeding through duplicative presentations. Only participants may file motions and make oral presentations. Any participant who desires to become a party to an evidentiary hearing must either file a Motion for Evidentiary Hearing or state his desire to become a party in his Response. Of course, the DOE Office that issued the Proposed Remedial Order and the person to whom it was directed shall automatically be considered participants in all stages of the enforcement proceeding.

The second new section, 10 CFR 205.195, is entitled "Filing and Service of All Submissions." It merely establishes in a separate section the requirements formerly included in the Statement of Objections section. Regular mail is now permitted for service upon all persons when accompanied by a certificate of service. Regular mail is still not permitted, however, for filings with the Office of Hearings and Appeals; all filings must be made pursuant to § 205.4 and conform to the requirements of § 209.9, which requires motions to be filed as separate documents.

Other significant clarifications to the regulations include the addition to § 205.199G of a clause specifying that the Director of the Office of Hearings and Appeals or his designee may permit, after consideration of a motion and reply, any submission to be

amended or withdrawn after it has been filed. We believe this procedure will be useful when a participant has discovered new evidence or even new issues that would require a Statement of Objections to be amended or a Motion for Evidentiary Hearing to be corrected or filed out of time.

Section 205.199B now explicitly states that the Office of Hearings and Appeals may remand a Proposed Remedial Order to the issuing DOE office. In the interest of administrative economy and efficiency, however, and to avoid needless fragmentation of proceedings, the Office of Hearings and Appeals intends to decide all issues of fact and law raised during a proceeding to the maximum extent possible based on the record before remand.

It should be noted that § 205.199I(b) allows the ERA to issue final Ancillary Orders in order to implement refunds and other remedies and specifies that Ancillary Orders are only appealable to the Office of Hearings and Appeals pursuant to Subpart H. Ancillary Orders may not be appealed to FERC, since they are not Remedial Orders. See Department of Energy Organization Act, section 503(c), Pub. L. 95-91.

DOE offices that file responses containing confidential information shall notify the participant to which the material relates of his opportunity to identify and delete the confidential information. If the participant desires to review the DOE submissions before they are served outside the DOE, the participant must serve the DOE submission with any confidential information deleted within the 14-day period specified in § 205.195(b)(2) unless the DOE office establishes a shorter time limit for such service. The participant will be required to serve a deleted copy of the DOE submission upon all persons on the official service list, including the DOE office that issued the submission, within the established time period.

Because the ERA may now submit supplemental information 20 days after service of a Notice of Objection, the time in which to file a Statement of Objections has been extended from 30 days after service of the Proposed Remedial Order to 40 days after service of the Notice of Objection. 10 CFR 205.196(a). This will allow time for a firm to address the facts contained in any supplemental information submitted by the ERA. The time in which to file a Notice of Objection has also been increased to 15 days after notice of the Proposed Remedial Order has been published in the FEDERAL REGISTER. 10 CFR 205.193(a).

Subsection 205.196(c) has also been added to the Statement of Objections section. This subsection incorporates a long standing practice that Notices of

Probable Violation, each Response thereto, the Proposed Remedial Order itself, and any relevant ERA work papers or supplemental information previously submitted to the person by ERA must accompany any Statement of Objections filed by the person to whom the Proposed Remedial Order is directed. Other participants need only be notified that such material is available upon request, except that the DOE Assistant General Counsel for Administrative Litigation must be served with all the material.

The time afforded for a response to a Motion for Discovery or for Evidentiary Hearing that accompanies a Statement of Objections has been increased to 30 days to permit a more reasoned response to all the documents at the same time. Section 205.197(b) also now explicitly allows a participant to file a Reply to any Response within ten days of service.

Motions for Discovery must always be served upon each person from whom discovery is sought, with a notice of his right to file a response within 20 days of the date of service. It should be noted that discovery may be sought from a person who is not on the official service list. The various sanctions for failure to comply with discovery orders previously enumerated in detail in § 205.198(h)(1) have been eliminated, although this in no way limits the availability of these sanctions. This change merely reduces the complexity of the regulations and also eliminates any confusion by persons who thought the list of sanctions was exhaustive.

We have deleted former § 205.196(d), "Motions to Dismiss," as a basis for a separate motion, but retained it in § 205.199(h)(6) as the basis for a separate or additional response to a particular factual representation contained in a Motion for Evidentiary Hearing. If a person seeks to have the entire Statement of Objections or any specific issue of fact or law dismissed as irrelevant or immaterial, he should include that request in the Response to the Statement of Objections. 10 CFR 205.197. A participant may file a response within five days of service of any miscellaneous motions filed by other participants pursuant to § 205.199G. Section 205.195(a); see § 205.5; "Computation of Time."

(Emergency Petroleum Allocation Act of 1973; Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-89, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332; Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-91; Energy Policy and Conservation Act; Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91, as amended, Pub. L. 95-620; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 205 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective February 7, 1979.

Issued in Washington, D.C., February 2, 1979.

DAVID J. BARDIN,
*Administrator, Economic
Regulatory Administration.*

MELVIN GOLDSTEIN,
*Director, Office of
Hearings and Appeals.*

1. The table of contents for Part 205 is amended by replacing the Contents of Subpart O with the following list:

Subpart O—Notice of Probable Violation, Remedial Order, Notice of Proposed Disallowance, and Order of Disallowance

Sec.
205.190 Purpose and Scope.
205.191 Notice of Probable Violation; Commencement of Enforcement Proceedings.
205.192 Proposed Remedial Order.
205.192A Burden of Proof.
205.193 Notice of Objection.
205.193A Submission of ERA Supplemental Information.
205.194 Participants; Official Service List.
205.195 Filing and Service of All Submissions.
205.196 Statement of Objections.
205.197 Response to Statement of Objections; Reply.
205.198 Discovery.
205.198A Protective Order.
205.199 Evidentiary Hearing.
205.199A Hearing for the Purpose of Oral Argument Only.
205.199B Remedial Order.
205.199C Appeal of Remedial Order to FERC.
205.199D Interim Remedial Order for Immediate Compliance.
205.199E Notice of Proposed Disallowance, Proposed Order of Disallowance, and Order of Disallowance.
205.199F Ex Parte Communications.
205.199G Extension of Time; Interim and Ancillary Orders.
205.199H Actions Not Subject to Administrative Appeal.
205.199I Remedies.
205.199J Consent Order.

2. Sections 205.190, 205.191, 205.192, 205.193, 205.194, 205.195, 205.196 and 205.197 are revised and §§ 205.192A, 205.193A, and 205.198 through 205.199J are added as follows:

§ 205.190 Purpose and scope.

(a) This subpart establishes the procedures for determining the nature and extent of violations of the DOE regulations in Parts 210, 211, and 212 and the procedures for issuance of a Notice of Probable Violation, a Proposed Remedial Order, a Remedial Order, an Interim Remedial Order for Immediate Compliance, a Remedial Order for Immediate Compliance, a

Notice of Probable Disallowance, a Proposed Order of Disallowance, an Order of Disallowance, or a Consent Order. Nothing in these regulations shall affect the authority of DOE enforcement officials in coordination with the Department of Justice to initiate appropriate civil or criminal enforcement actions in court at any time.

(b) When any report required by the ERA or any audit or investigation discloses, or the ERA otherwise discovers, that there is reason to believe a violation of any provision of this chapter, or any order issued thereunder, has occurred, is continuing or is about to occur, the ERA may conduct an inquiry to determine the nature and extent of the violation. A Remedial Order or Order of Disallowance may be issued thereafter by the Office of Hearings and Appeals. The ERA may commence enforcement proceedings by serving a Notice of Probable Violation, a Notice of Probable Disallowance, a Proposed Remedial Order, a Proposed Order of Disallowance, or an Interim Remedial Order for Immediate Compliance.

§ 205.191. Notice of probable violation; commencement of enforcement proceedings.

(a) The ERA may begin a proceeding under this subpart by issuing a Notice of Probable Violation if the ERA has reason to believe that a violation has occurred, is continuing or is about to occur.

(b) Within 30 days after the service of a Notice of Probable Violation, the person upon whom the Notice is served may file a reply with the ERA office that issued the Notice of Probable Violation at the address provided in § 205.12. The ERA may extend the 30-day period for good cause shown.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a statement of all relevant facts pertaining to the act or transaction that is the subject of the Notice of Probable Violation. The reply shall include a statement of the legal, business and other reasons for the act or transaction; a description of the act or transaction; and a discussion of the pertinent provisions and relevant facts reflected in any documents submitted with the reply. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the reply. When the Notice or Probable Violation pertains to only one step of a larger integrated transaction, the facts regarding the entire transaction shall be submitted. In further proceedings regarding this act or transaction, the Office of Hearings and Appeals will decline to consider an issue that was not raised in the reply to the

Notice of Probable Violation unless good cause is shown for the failure to raise the issue.

(d) The reply shall include a discussion of the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE or its predecessor agencies.

(e) The reply should indicate whether the person requests an informal conference regarding the notice. A request for a conference must be in writing.

(f) If a person has not filed a reply with the ERA within the 30-day or other period authorized for reply, the person shall be deemed to have admitted the accuracy of the factual allegations and legal conclusions stated in the Notice of Probable Violation, and the ERA may proceed to issue a Proposed Remedial Order in accordance with § 205.192.

(g) If the ERA finds, during or after the 30-day or other period authorized for reply, that no violation has occurred, is continuing, or is about to occur, or that for any reason the issuance of a Proposed Remedial Order would not be appropriate, it shall rescind the Notice of Probable Violation and inform the person to whom the Notice was issued of the rescission.

§ 205.192. Proposed remedial order.

(a) If the ERA finds, after the 30-day or other period authorized for reply to the Notice of Probable Violation, that a violation has occurred, is continuing, or is about to occur, it may issue a Proposed Remedial Order, which shall set forth the relevant facts and law.

(b) The ERA may issue a Proposed Remedial Order at any time it finds that a violation has occurred, is continuing, or is about to occur even if it has not previously issued a Notice of Probable Violation.

(c) The ERA shall serve a copy of the Proposed Remedial Order upon the person to whom it is directed. The ERA shall promptly publish a notice in the FEDERAL REGISTER which states the person to whom the Proposed Remedial Order is directed, his address, and the products, dollar amounts, time period, and geographical area specified in the Proposed Remedial Order. The notice shall indicate that a copy of the Proposed Remedial Order with confidential information, if any, deleted may be obtained from the ERA and that within 15 days after the date of publication any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals of accordance with § 205.193. The ERA shall mail copies of the FEDERAL REGISTER notice to all readily identifiable persons who are likely to be aggrieved

by issuance of the Proposed Remedial Order as a final order.

(d) The Proposed Remedial Order shall set forth the proposed findings of fact and conclusions of law upon which it is based. It shall also include a discussion of the relevant authorities which support the position asserted, including rules, regulations, rulings, interpretations and previous decisions issued by DOE or its predecessor agencies. The Proposed Remedial Order shall be accompanied by a declaration executed by the DOE employee primarily knowledgeable about the facts of the case stating that, to the best of declarant's knowledge and belief, the findings of fact are correct.

(e) The ERA may amend or withdraw a Proposed Remedial Order at its discretion prior to the date of service of a Statement of Objections in that proceeding. The date of service of the amended documents shall be considered the date of service of the Proposed Remedial Order in calculating the time periods specified in this Part 205.

§ 205.192A. Burden of Proof.

(a) In a Proposed Remedial Order proceeding the ERA has the burden of establishing a prima facie case as to the validity of the findings of fact and conclusions of law asserted therein. The ERA shall be deemed to meet this burden by the service of a Proposed Remedial Order that meets the requirements of § 205.192(d) and any supplemental information that may be made available under § 205.193A.

(b) Once a prima facie case has been established, a person who objects to a finding of fact or conclusion of law in the Proposed Remedial Order has the burden of going forward with the evidence. Furthermore, the proponent of additional factual representations has the burden of going forward with the evidence.

(c) Unless otherwise specified by the Director of the Office of Hearings and Appeals or his designee, the proponent of an order or a motion or additional factual representations has the ultimate burden of persuasion.

§ 205.193. Notice of Objection.

(a) Within 15 days after publication of the notice of a Proposed Remedial Order in the FEDERAL REGISTER any aggrieved person may file a Notice of Objection to the Proposed Remedial Order with the Office of Hearings and Appeals. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. No confidential information shall be included in a Notice of Objection. The DOE shall place one

copy of the Notice in the Office of Hearings and Appeals Public Docket Room.

(b) A person who fails to file a timely Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by paragraph (a) of this section, the Proposed Remedial Order may be issued as a final order.

(c) A person who files a Notice of Objection shall on the same day serve a copy of the Notice upon the person to whom the Proposed Remedial Order is directed, the DOE Office that issued the Proposed Remedial Order, and the DOE Assistant General Counsel for Administrative Litigation.

(d) The Notice shall include a certification of compliance with the provisions of this section, the names and addresses of each person served with a copy of the Notice, and the date and manner of service.

(e) If no person files a timely Notice of Objection, ERA may request the Office of Hearings and Appeals to issue the Proposed Remedial Order as a final Remedial Order.

(f) In order to exhaust administrative remedies with respect to a Remedial Order proceeding, a person must file a timely Notice of Objection and Statement of Objections with the Office of Hearings and Appeals.

§ 205.193A Submission of ERA Supplemental Information.

Within 20 days after service of a Notice of Objection to a Proposed Remedial Order the ERA may serve, upon the person to whom the Proposed Remedial Order was directed, supplemental information relating to the calculations and determinations which support the findings of fact set forth in the Proposed Remedial Order.

§ 205.194 Participants; Official Service List.

(a) Upon receipt of a Notice of Objection, the Office of Hearings and Appeals shall publish a notice in the FEDERAL REGISTER which states the person to whom the Proposed Remedial Order is directed, his address and the products, dollar amounts, time period, and geographical area specified in the Proposed Remedial Order. The notice shall state that any person who wishes to participate in the proceeding must file an appropriate request with the Office of Hearings and Appeals.

(b) The Office that issued the Proposed Remedial Order and the person to whom the Order is directed shall be considered participants before the Office of Hearings and Appeals at all stages of an enforcement proceeding. Any other person whose interest may be affected by the proceeding may file

a request to participate in the proceeding with the Office of Hearings and Appeals within 20 days after publication of the notice referred to in paragraph (a) of this section. The request shall contain (1) the person's name, address, and telephone number and similar information concerning his duly authorized representative, if any; (2) a detailed description of the person's interest in the proceeding; (3) the specific reasons why the person's active involvement in the proceeding will substantially contribute to a complete resolution of the issues to be considered in the proceeding; (4) a statement of the position which the person intends to adopt in the proceeding; and (5) a statement of the particular aspects of the proceeding, e.g. oral argument, submission of briefs, or discovery, in which the person wishes to actively participate.

(c) After considering the requests submitted pursuant to paragraph (b) of this section, the Office of Hearings and Appeals shall determine those persons who may participate on an active basis in the proceeding and the nature of their participation. Participants with similar interests may be required to consolidate their submissions and to appear in the proceeding through a common representative.

(d) Within 30 days after publication of the notice referred to in paragraph (a) of this section, the Office of Hearings and Appeals shall prepare an official service list for the proceeding. Within the same 30 day period the Office of Hearings and Appeals shall mail the official service list to all persons who filed requests to participate. For good cause shown a person may be placed on the official service list as a non-participant, for the receipt of documents only. An opportunity shall be afforded to participants to oppose the placement of a non-participant on the official service list.

(e) A person requesting to participate after the period for submitting requests has expired must show good cause for failure to file a request within the prescribed time period.

(f) The Office of Hearings and Appeals may limit the nature of a person's participation in the proceeding, if it finds that the facts upon which the person's request was based have changed or were incorrect when stated or that the person has not been actively participating or has engaged in disruptive or dilatory conduct. The action referred to in this provision shall be taken only after notice and an opportunity to be heard are afforded.

§ 205.195 Filing and Service of All Submissions.

(a)(1) Statements of Objections, Responses to such Statements, and any motions or other documents filed in

connection with a proceeding shall meet the requirements of § 205.9 and shall be filed with the Office of Hearings and Appeals in accordance with § 205.4. Unless otherwise specified, any participant may file a response to a motion within five days of service.

(2) All documents shall be filed in duplicate, unless they contain confidential information, in which case they must be filed in triplicate.

(3) If a person claims that any portion of a document which he is filing contains confidential information, such information should be deleted from two of the three copies which are filed. One copy from which confidential information has been deleted will be placed in the Office of Hearings and Appeals Public Docket Room.

(b)(1) Persons other than DOE offices shall on the date a submission is filed serve each person on the official service list. Service shall be made in accordance with § 205.7 and may also be made by deposit in the regular United States mail, properly stamped and addressed, when accompanied by proof of service consisting of a certificate of counsel or an affidavit of the person making the service. If any filing arguably contains confidential information, a person may serve copies with the confidential information deleted upon all persons on the official service list except DOE offices, which shall be served both an original filing and one with deletions.

(2) A DOE office shall on the date it files a submission serve all persons on the official service list, unless the filing arguably contains confidential information. In that case the DOE office shall notify the person to whom the information relates of the opportunity to identify and delete the confidential information. The DOE Office may delay the service of a submission containing arguably confidential information upon all persons other than the possessor of the confidential information and other DOE offices up to 14 days. The possessor of the confidential information shall serve the filing with any deletions upon all persons on the official service list within such time period.

(c) Any filing made under this section shall include a certification of compliance by the filer with the provisions of this subpart. The person serving a document shall file a certificate of service, which includes the date and manner of service for each person on the official service list.

§ 205.196 Statement of Objections.

(a) A person who has filed a Notice of Objection shall file a Statement of Objections to a Proposed Remedial Order within 40 days after service of the Notice of Objection. A request for an extension of time for filing must be

submitted in writing and may be granted for good cause shown.

(b) The Statement of Objections shall set forth the bases for the objections to the issuance of the Proposed Remedial Order as a final order, including a specification of the issues of fact or law which the person intends to contest in any further proceeding involving the compliance matter which is the subject of the Proposed Remedial Order. The Statement shall set forth the findings of fact contained in the Proposed Remedial Order which are alleged to be erroneous, the factual basis for such allegations, and any alternative findings which are sought. The Statement shall include a discussion of all relevant authorities which support the position asserted. The Statement may include additional factual representations which are not referred to in the Proposed Remedial Order and which the person contends are material and relevant to the compliance proceeding. For each additional factual representation which the person asserts should be made, the Statement shall include reasons why the factual representation is relevant and material, and the manner in which its validity is or will be established. The person shall also specify the manner in which each additional issue of fact was raised in any prior administrative proceeding which led to issuance of the Proposed Remedial Order, or the reasons why it was not raised.

(c) A Statement of Objections that is filed by the person to whom a Proposed Remedial Order is directed shall include a copy of any relevant Notice of Probable Violation, each Response thereto, the Proposed Remedial Order, and any relevant work papers or supplemental information previously provided by ERA. Copies of this material must also be included with the copy of the Statement of Objections served upon the DOE Assistant General Counsel for Administrative Litigation. All other persons on the official service list must be notified that such materials are available from the notifier upon written request.

§ 205.197 Response to Statement of Objections; Reply.

(a) Within 30 days after service of a Statement of Objections each participant may file a Response. If any motions are served with the Statement of Objections, a participant shall have 30 days from the date of service to respond to such submissions, notwithstanding any shorter time periods otherwise required in this Subpart. The Response shall contain a full discussion of the position asserted and a discussion of the legal and factual bases which support that position. The Response may also contain a request that

any issue of fact or law advanced in a Statement of Objections be dismissed. Any such request shall be accompanied by a full discussion of the reasons supporting the dismissal.

(b) A participant may submit a Reply to any Response within 10 days after the date of service of the Response.

§ 205.198 Discovery.

(a) If a person intends to file a Motion for Discovery, he must file it at the same time that he files his Statement of Objections or at the same time he files his Response to a Statement of Objections, whichever is earlier. All Motions for Discovery and related filings must be served upon the person to whom the discovery is directed. If the person to whom the discovery is directed is not on the official service list, the documents served upon him shall include a copy of this section, the address of the Office of Hearings and Appeals and a statement that objections to the Motion may be filed with the Office of Hearings and Appeals.

(b) A Motion for Discovery may request that:

(1) A person produce for inspection and photocopying non-privileged written material in his possession;

(2) A person respond to written interrogatories;

(3) A person admit to the genuineness of any relevant document or the truth of any relevant fact; or

(4) The deposition of a material witness be taken.

(c) A Motion for Discovery shall set forth the reasons why the particular discovery is necessary in order to obtain relevant and material evidence and shall explain why such discovery would not unduly delay the proceeding.

(d) Within 20 days after a Motion for Discovery is served, a participant or a person to whom the discovery is directed may file a request that the Motion be denied in whole or in part, stating the reasons which support the request.

(e) Discovery may be conducted only pursuant to an Order issued by the Office of Hearings and Appeals. A Motion for Discovery will be granted if it is concluded that discovery is necessary for the party to obtain relevant and material evidence and that discovery will not unduly delay the proceeding. Depositions will be permitted if a convincing showing is made that the participant cannot obtain the material sought through one of the other discovery means specified in paragraph (b) of this section.

(f) The Director of the Office of Hearings and Appeals or his designee may issue subpoenas in accordance with § 205.8 in support of Discovery

Orders, except that § 205.8 (h)(2), (3), and (4) shall not apply to such subpoenas.

(g) The Office of Hearings and Appeals may order that any direct expenses incurred by a person to produce evidence pursuant to a Motion for Discovery be charged to the person who filed the Motion.

(h)(1) If a person fails to comply with an order relating to discovery, the Office of Hearings and Appeals may order appropriate sanctions.

(2) It shall be the duty of aggrieved participants to request that appropriate relief be fashioned in such situations.

(i) Any order issued by the Office of Hearings and Appeals with respect to discovery shall be subject to further administrative review or appeal only upon issuance of the determination referred to in § 205.199B.

§ 205.198A Protective order.

A participant who has unsuccessfully attempted in writing to obtain information that another participant claims is confidential may file a Motion for Discovery and Protective Order. This motion shall meet the requirements of § 205.198 and shall specify the particular confidential information that the movant seeks and the reasons why the information is necessary to adequately present the movant's position in the proceeding. A copy of the written request for information, a certification concerning when and to whom it was served and a copy of the response, if any, shall be appended to the motion. The motion must give the possessor of the information notice that a Response to the Motion must be filed within ten days. The Response shall specify the safeguards, if any, that should be imposed if the information is ordered to be released. The Office of Hearings and Appeals may issue a Protective Order upon consideration of the Motion and the Response.

§ 205.199 Evidentiary hearing.

(a) *Filing Requirements.* At the time a person files a Statement of Objections he may also file a motion requesting an evidentiary hearing be convened. A motion requesting an evidentiary hearing may be filed by any other participant within 30 days after that participant is served with a Statement of Objections.

(b) *Contents of Motion for Evidentiary Hearing.* A Motion for Evidentiary Hearing shall specify each disputed issue of fact and the bases for the alternative findings the movant asserts. The movant shall also describe the manner in which each disputed issue of fact was raised in any prior administrative proceeding which led to issuance of the Proposed Remedial

Order, or why it was not raised. The movant shall, with respect to each disputed or alternative finding of fact:

(1) As specifically as possible, identify the witnesses whose testimony is required;

(2) State the reasons why the testimony of the witnesses is necessary; and

(3) State the reasons why the asserted position can be effectively established only through the direct questioning of witnesses at an evidentiary hearing.

(c) *Response to Motion for Evidentiary Hearing.* Within 20 days after service of any Motion for Evidentiary Hearing, the Office that issued the Proposed Remedial Order shall, and any other participant may file a Response with the Office of Hearings and Appeals. The Response shall specify:

(1) Each particular factual representation which is accepted as correct for purposes of the proceeding;

(2) Each particular factual representation which is denied;

(3) Each particular factual representation which the participant is not in a position to accept or deny;

(4) Each particular factual representation which is not accepted and the participant wishes proven by the submission of evidence;

(5) Each particular factual representation which the participant is prepared to dispute through the testimony of witnesses or the submission of verified documents; and

(6) Each particular factual representation which the participant asserts should be dismissed as immaterial or irrelevant.

(d) *Prehearing Conferences.* After all submissions with respect to a Motion for Evidentiary Hearing are filed, the Office of Hearings and Appeals may conduct conferences or hearings to resolve differences of view among the participants.

(e) *Decision on Motion for Evidentiary Hearing.* After considering all relevant information received in connection with the Motion, the Office of Hearings and Appeals shall enter an Order. In the Order the Office of Hearings and Appeals shall direct that an evidentiary hearing be convened if it concludes that a genuine dispute exists as to relevant and material issues of fact and an evidentiary hearing would substantially assist it in making findings of fact in an effective manner. If the Motion for Evidentiary Hearing is granted in whole or in part, the Order shall specify the parties to the hearing, any limitations on the participation of a party, and the issues of fact set forth for the evidentiary hearing. The Order may also require parties that have adopted similar positions to consolidate their presenta-

tions and to appear at the evidentiary hearing through a common representative. If the Motion is denied, the Order may allow the movant to file affidavits and other documents in support of his asserted findings of fact.

(f) *Review of Decision.* The Order of the Office of Hearings and Appeals with respect to a Motion for Evidentiary Hearing shall be subject to further administrative review or appeal only upon issuance of the determination referred to in § 205.199B.

(g) *Conduct of Evidentiary Hearing.* All evidentiary hearings convened pursuant to this section shall be conducted by the Director of the Office of Hearings and Appeals or his designee. At any evidentiary hearing the parties shall have the opportunity to present material evidence which directly relates to a particular issue of fact set forth for hearing. The presiding officer shall afford the parties an opportunity to cross examine all witnesses. The presiding officer may administer oaths and affirmations, rule on objections to the presentation of evidence, receive relevant material, rule on any motion to conform the Proposed Remedial Order to the evidence presented, rule on motions for continuance, dispose of procedural requests, determine the format of the hearing, modify any order granting a Motion for Evidentiary Hearing, direct that written motions or briefs be provided with respect to issues raised during the course of the hearing, issue subpoenas, and otherwise regulate the conduct of the hearing. The presiding officer may take reasonable measures to exclude duplicative material from the hearing, and may place appropriate limitations on the number of witnesses that may be called by a party. The presiding officer may also require that evidence be submitted through affidavits, or other documents if the direct testimony of witnesses will unduly delay the orderly progress of the hearing and would not contribute to resolving the issues involved in the hearing. The provisions of § 205.8 which relate to subpoenas and witness fees shall apply to any evidentiary hearing, except that subsection § 205.8(h) (2), (3), and (4) shall not apply.

§ 205.199A Hearing for the purpose of oral argument only.

(a) A participant is entitled upon timely request to a hearing to present oral argument with respect to the Proposed Remedial Order, whether or not an evidentiary hearing is requested or convened. A participant's request shall normally be considered untimely, if made more than 10 days after service of a determination regarding any motion filed by the requestor or, if no motions were filed by him, if made

after the date for filing his Reply or his Response to a Statement of Objections.

(b) If an evidentiary hearing is convened, and a hearing for oral argument is requested, the Office of Hearings and Appeals shall determine whether the hearing for oral argument shall be held in conjunction with the evidentiary hearing or at a separate time.

(c) A hearing for the purpose of receiving oral argument will generally be conducted only after the issues involved in the proceeding have been delineated, and any written material which the Office of Hearings and Appeals has requested to supplement a Statement of Objections or Responses has been submitted. The presiding officer may require further written submissions in support of any position advanced or issued at the hearing, and shall allow responses any such submissions.

§ 205.199B Remedial order.

(a) After considering all information received during the proceeding, the Director of the Office of Hearings and Appeals or his designee may issue a final Remedial Order. The Remedial Order may adopt the findings and conclusions contained in the Proposed Remedial Order or may modify or rescind any such finding or conclusion to conform the Order to the evidence or on the basis of a determination that the finding or conclusion is erroneous in fact or law or is arbitrary or capricious. In the alternative, the Office of Hearings and Appeals may determine that no Remedial Order should be issued or may remand all or a portion of the Proposed Remedial Order to the issuing DOE office for further consideration or modification. Every determination made pursuant to this section shall state the relevant facts and legal bases supporting the determination.

(b) The DOE shall serve a copy of any determination issued pursuant to paragraph (a) of this section upon the person to whom it is directed, any person who was served with a copy of the Proposed Remedial Order, the DOE office that issued the Proposed Remedial Order, the DOE Assistant General Counsel for Administrative Litigation and any other person on the official service list. Appropriate deletions may be made in the determinations to ensure that confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552. A copy of the determination with appropriate deletions to protect confidential and proprietary data shall be placed in the Office of Hearings and Appeals Public Docket Room. (11)

§ 205.199C Appeals of remedial order to FERC.

(a) The person to whom a Remedial Order is issued by the Office of Hearings and Appeals may file an administrative appeal if the Remedial Order proceeding was initiated by a Notice of Probable Violation issued after October 1, 1977, or, in those situations in which no Notice of Probable Violation was issued, if the proceeding was initiated by a Proposed Remedial Order issued after October 1, 1977.

(b) Any such appeal must be initiated within 30 days after service of the Order by giving written notice to the Office of Hearings and Appeals that the person to whom a Remedial Order is issued wishes to contest the Order.

(c) The Office of Hearings and Appeals shall promptly advise the Federal Energy Regulatory Commission of its receipt of a notice described in paragraph (b) of this section.

(d) The Office of Hearings and Appeals may, on a case by case basis, set reasonable time limits for the Federal Energy Regulatory Commission to complete its action on such an appeal proceeding.

(e) In order to exhaust administrative remedies, a person who is entitled to appeal a Remedial Order issued by the Office of Hearings and Appeals must file a timely appeal and await a decision on the merits. Any Remedial Order that is not appealed within the 30-day period shall become effective as a final Order of the DOE and is not subject to review by any court.

§ 205.199D Interim Remedial Order for Immediate Compliance.

(a) Notwithstanding the provisions of §§ 205.191 through 205.199C, the DOE may issue an Interim Remedial Order for Immediate Compliance, which shall be effective upon issuance and until rescinded or suspended, if it finds:

(1) There is a strong probability that a violation has occurred, is continuing or is about to occur;

(2) Irreparable harm will occur unless the violation is remedied immediately; and

(3) The public interest requires the avoidance of such irreparable harm through immediate compliance and waiver of the procedures afforded under §§ 205.191 through 205.199C.

(b) An Interim Remedial Order for Immediate Compliance shall be served promptly upon the person against whom such Order is issued by personal service, telex or telegram, with a copy served by registered or certified mail. The copy shall contain a written statement of the relevant facts and the legal basis for the Remedial Order for Immediate Compliance, including the findings required by paragraph (a) of this section.

(c) The DOE may rescind or suspend an Interim Remedial Order for Immediate Compliance if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a Notice of Probable Violation or Proposed Remedial Order issued under § 205.191 or § 205.192.

(d) If at any time in the course of a proceeding commenced by a Notice of Probable Violation or Proposed Remedial Order the criteria set forth in paragraph (a) of the section are satisfied, the DOE may issue an Interim Remedial Order for Immediate Compliance, even if the 30-day period for submitting a reply to that document has not expired.

(e) Any person who is aggrieved by an Interim Remedial Order for Immediate Compliance may contest the basis for the Order within 10 days after the issuance of the Interim Order by filing a Notice of Objection which meets the requirements of § 205.193. The person objecting to the issuance of the Interim Remedial Order for Immediate Compliance shall follow the procedures specified in §§ 205.192A through 205.199C to establish that the Interim Order is erroneous in fact or law or is arbitrary or capricious.

(f) Any aggrieved person who fails to file a timely Notice of Objection to the issuance of an Interim Remedial Order may no longer object to issuance of the Interim Order in final form. Under those circumstances, the Interim Order shall promptly be issued as a final Order of the DOE.

(g) After considering all information received during a proceeding convened pursuant to a Notice of Objection described in paragraph (e) of this section, the Director of the Office of Hearings and Appeals or his designee shall determine whether the Interim Order should be made permanent, should be modified, or should be rescinded. The general procedures in §§ 205.192 through 205.199C shall apply to any such determination.

(h)(1) Any person aggrieved by an Interim Order for Immediate compliance may file an Application for Temporary Stay or an Application for Stay of that Order with the Office of Hearings and Appeals. The Office of Hearings and Appeals shall decide an Application for Temporary Stay within two working days after receipt and an Application for Stay within 10 working days after receipt of the application.

(2) A person whose application for a Stay of an Interim Remedial Order is denied may appeal that denial to the Federal Energy Regulatory Commission. The Office of Hearings and Appeals may, on a case by case basis, set

reasonable time limits for the Commission to complete action on any such appeal.

(3) After reaching a decision on an appeal involving an Application for Stay, the Federal Energy Regulatory Commission shall refer the matter back to the Office of Hearings and Appeals for proceedings on the merits of the Interim Remedial Order pursuant to paragraphs (e) through (g) of this section.

(i)(1) An administrative appeal to the Federal Energy Regulatory Commission from a Remedial Order for Immediate Compliance issued pursuant to paragraph (g) or this section must be filed within 30 days after service of the Order.

(2) A person who wishes to contest a Remedial Order for Immediate Compliance shall notify the Office of Hearings and Appeals within 30 days after service of the Order that he wishes to contest the Order, and the procedures of § 205.199C (c) and (d) shall apply to the appeal.

(3) In order to exhaust administrative remedies, a person must file an Appeal pursuant to the procedures set forth in this section and await an Order granting or denying the Appeal.

§ 205.199E Notice of Proposed Disallowance, Proposed Order of Disallowance, and Order of Disallowance.

(a) The ERA shall begin a proceeding under this section by issuing a Notice of Proposed Disallowance pursuant to the provisions of Parts 205 and 212 of this chapter.

(b) Within 30 days after service, the person upon whom the Notice of Proposed Disallowance is served may file a reply with the ERA office that issued the Notice. The ERA may extend the 30-day period for good cause shown.

(c) The reply shall set forth all relevant facts and law pertaining to the matter that is the subject of the Notice and be signed by the person filing it. In further proceedings regarding this act or transaction, the Office of Hearings and Appeals will decline to consider an issue that was not raised in the reply to the Notice of Probable Disallowance unless good cause is shown for the failure to raise the issue.

(d) The reply shall include a discussion of all relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE or its predecessor agencies.

(e) A request for a conference regarding the Notice should be included in the reply.

(f) If a reply has not been filed with the ERA within the 30-day or extended period provided, the recipient shall be deemed to admit the accuracy

of the factual allegations and legal conclusions stated in the Notice of Proposed Disallowance, and the Notice shall become a Proposed Order of Disallowance.

(g) After consideration of any timely reply filed, the ERA may adopt, modify, or rescind the Notice of Proposed Disallowance and issue a Proposed Order of Disallowance. The Proposed Order shall set forth the relevant facts and legal bases for the conclusions reached therein.

(h) The procedures specified in §§ 205.192 through 205.199C shall be applicable to Proposed Orders of Disallowance, and shall govern the issuance of Orders of Disallowance and Appeals from Orders of Disallowance.

(i) An Order of Disallowance shall be effective upon issuance.

§ 205.199F Ex Parte Communications.

(a) No person who is not employed or otherwise supervised by the Office of Hearings and Appeals shall submit ex parte communications to the Director or any person employed or otherwise supervised by the Office with respect to any matter involved in Remedial Order or Order of Disallowance proceedings.

(1) Ex parte communications include any ex parte oral or written communications relative to the merits of a Proposed Remedial Order, Interim Remedial Order for Immediate Compliance, or Proposed Order of Disallowance proceeding pending before the Office of Hearings and Appeals. The term shall not, however, include requests for status reports, inquiries as to procedures, or the submission of proprietary or confidential information. Notice that proprietary or confidential submissions have been made shall be given to all persons on the official service list.

(b) If any communication occurs that violates the provisions of this section, the Office of Hearings and Appeals shall promptly make the substance of the communication available to the public and serve a copy of a written communication or a memorandum summarizing an oral communication to all participants in the affected proceeding. The Office of Hearings and Appeals may also take any other appropriate action to mitigate the adverse impact to any person whose interest may be affected by the ex parte contact.

§ 205.199G Extension of Time; Interim and Ancillary Orders.

The Director of the Office of Hearings and Appeals or his designee may permit upon motion any document or submission referred to in this subpart other than appeals to FERC to be amended or withdrawn after it has been filed or to be filed within a time

period different from that specified in this subpart. The Director or his designee may upon motion or on his own initiative issue any interim or ancillary Orders, reconsider any determinations, or make any rulings or determinations that are deemed necessary to ensure that the proceedings specified in this Subpart are conducted in an appropriate manner and are not unduly delayed.

§ 205.199H Actions Not Subject to Administrative Appeal.

A Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order or Interim Remedial Order for Immediate Compliance issued pursuant to this subpart shall not be an action from which there may be an administrative appeal pursuant to Subpart H. In addition, a determination by the Office of Hearings and Appeals that a Remedial Order, an Order of Disallowance, or a Remedial Order for Immediate Compliance should not be issued shall not be appealable pursuant to Subpart H.

§ 205.199I Remedies.

(a) a Remedial Order, A Remedial Order for Immediate Compliance, an Order of Disallowance, or a Consent Order may require the person to whom it is directed to roll back prices, to make refunds equal to the amount (plus interest) charged in excess of those amounts permitted under DOE Regulations, to make appropriate compensation to third persons for administrative expenses of effectuating appropriate remedies, and to take such other action as the DOE determines is necessary to eliminate or to compensate for the effects of a violation or any cost disallowance pursuant to § 212.83 or § 212.84. Such action may include a direction to the person to whom the Order is issued to establish an escrow account or take other measures to make refunds directly to purchasers of the products involved, notwithstanding the fact that those purchasers obtained such products from an intermediate distributor of such person's products, and may require as part of the remedy that the person to whom the Order is issued maintain his prices at certain designated levels, notwithstanding the presence or absence of other regulatory controls on such person's prices. In cases where purchasers cannot be reasonably identified or paid or where the amount of each purchaser's overcharge is incapable of reasonable determination, the DOE may refund the amounts received in such cases directly to the Treasury of the United States on behalf of such purchasers.

(b) The DOE may, when appropriate, issue final Orders ancillary to a Remedial Order, Remedial Order for

Immediate Compliance, Order of Disallowance, or Consent Order requiring that a direct or indirect recipient of a refund pass through, by such means as the DOE deems appropriate, including those described in paragraph (a) of this section, all or a portion of the refund, on a pro rata basis, to those customers of the recipient who were adversely affected by the initial overcharge. Ancillary Orders may be appealed to the Office of Hearings and Appeals only pursuant to Subpart H.

§ 205.199J Consent Order.

(a) Notwithstanding any other provision of this subpart, the DOE may at any time resolve an outstanding compliance investigation or proceeding, or a proceeding involving the disallowance of costs pursuant to § 205.199E with a Consent Order. A Consent Order must be signed by the person to whom it is issued, or a duly authorized representative, and must indicate agreement to the terms contained therein. A Consent Order need not constitute an admission by any person that DOE regulations have been violated, nor need it constitute a finding by the DOE that such person has violated DOE regulations. A Consent Order shall, however, set forth the relevant facts which form the basis for the Order.

(b) A Consent Order is a final Order of the DOE having the same force and effect as a Remedial Order issued pursuant to § 205.199B or an Order of Disallowance issued pursuant to § 205.199E, and may require one or more of the remedies authorized by § 205.199I and § 212.84(d)(3). A Consent Order becomes effective no sooner than 30 days after publication under paragraph (c) of this section, unless (1) the DOE makes a Consent Order effective immediately, because it expressly deems it necessary in the public interest, or (2) the Consent Order involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, in which case it will be effective when signed both by the person to whom it is issued and the DOE, and will not be subject to the provisions of paragraph (c) of this section unless the DOE determines otherwise. A Consent Order shall not be appealable pursuant to the provisions of § 205.199C or § 205.199D and Subpart H, and shall contain an express waiver of such appeal or judicial review rights as might otherwise attach to a final Order of the DOE.

(c) When a Consent Order has been signed, both by the person to whom it is issued and the DOE, the DOE will publish notice of such Consent Order in the FEDERAL REGISTER and in a press release to be issued simultaneously therewith. The FEDERAL REGISTER notice and the press release

will state at a minimum the name of the company concerned, a brief summary of the Consent Order and other facts or allegations relevant thereto, the address and telephone number of the DOE office at which copies of the Consent Order will be available free of charge, the address to which comments on the Consent Order will be received by the DOE, and the date by which such comments should be submitted, which date will not be less than 30 days after publication of the FEDERAL REGISTER notice. After the expiration of the comment period the DOE may withdraw its agreement to the Consent Order, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed. The DOE will publish in the FEDERAL REGISTER, and by press release, notice of any action taken on a Consent Order and such explanation of the action taken as deemed appropriate. The provisions of this paragraph shall be applicable notwithstanding the fact that a Consent Order may have been made immediately effective pursuant to paragraph (b) of this section (except in cases where the Consent Order involves sums of less than \$500,000 in the aggregate, excluding penalties and interest).

(d) At any time and in accordance with the procedures of Subpart J, a Consent Order may be modified or rescinded, upon petition by the person to whom the Consent Order was issued, and may be rescinded by the DOE upon discovery of new evidence which is materially inconsistent with evidence upon which the DOE's acceptance of the Consent Order was based. Modifications of a Consent Order which is subject to public comment under the provisions of paragraph (c) of this section, which in the opinion of the DOE significantly change the terms or the impact of the original Order, shall be republished under the provisions of that paragraph.

(e) Notwithstanding the issuance of a Consent Order, the DOE may seek civil or criminal penalties or compromise civil penalties pursuant to Subpart P concerning matters encompassed by the Consent Order, unless the Consent Order by its terms expressly precludes the DOE from so doing.

(f) If at any time after a Consent Order becomes effective it appears to the DOE that the terms of the Consent Order have been violated, the DOE may refer such violations to the Department of Justice for appropriate action in accordance with Subpart P.

[FR Doc. 79-4251 Filed 2-6-79; 8:45 am]

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Economic Regulatory Administration

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Inquiry

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 210, 211, 212]

[Docket No. ERA-R-79-3]

PROPANE DEREGULATION

Inquiry

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is presently considering whether current and foreseeable future market conditions may warrant exempting natural gas liquids (NGLs) or one or more particular NGL products (propane, butane and natural gasoline) from the Mandatory Petroleum Allocation and Price Regulations. We are presently assembling detailed data with respect to whether preliminary findings and views pertinent to the exemption of butane and natural gasoline can and should be made, and we may issue a Notice of Proposed rulemaking in the near future concerning these two products. The purpose of this Notice is to obtain comments and data with respect to the exemption of propane, to aid us in our evaluation of whether we can and should propose the exemption of that product. This Notice is *not* a proposal to deregulate propane, but a preliminary step to determine whether such a proposal would be appropriate.

DATE: Submit comments by April 6, 1979, 4:30 p.m.

ADDRESS: Send comments to: Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-79-3, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, Room 2222 A, 2000 M Street, NW., Washington, D.C. 20461 (202) 254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B 110, 2000 M Street, NW., Washington, D.C. 20461 (202) 634-2170.

Gerald P. Emmer (Office of Petroleum Allocation Regulations), Economic Regulatory Administration, Room 2304, 2000 M Street, NW., Washington, D.C. 20461 (202) 254-7200.

Jack O. Kendall (Office of General Counsel), Room 6A 127, 1000 Independence Avenue, SW., Washington,

D.C. 20585 (202) 252-6749.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Specific Requests for Comments
- III. Comment Procedures

INTRODUCTION

We have begun analysis to determine whether current and foreseeable future propane market conditions would warrant a proposal on our part to exempt propane from the Mandatory Allocation and Price Regulations promulgated under the Emergency Petroleum Allocation Act of 1973, as amended (EPAA, Pub. L. 93-159). We are issuing this Notice of Inquiry to obtain comments and data on the potential impacts of the deregulation of propane, with a view to determining whether we can and should propose the deregulation of this product. In order to make a preliminary determination as to whether the exemption of propane would be consistent with the public policy objectives specified in section 4(b)(1) of the EPAA, we generally request comments, and such data as is reasonably available to commenters, concerning the adequacy of projected propane supplies to satisfy potential users, especially for priority uses, and also as to whether equitable distribution of these supplies at equitable prices in all regions of the nation would occur in an unregulated market.

On August 10, 1978, the Federal Energy Regulatory Commission (FERC), in the exercise of its discretionary authority under section 404 of the Department of Energy Organization Act (Pub. L. 95-91), issued a Notice of Hearing and Opportunity for Comment (43 FR 36264, August 16, 1978) concerning the ERA's proposed final rule on the allocation of propane and other NGLs. The FERC's Notice requested comments regarding several specific issues, including "(w)hether, if the (NGLs) market is expected to be in a surplus condition, allocation and price regulations should be maintained on other than a standby basis." A public hearing on the proposed final rule and related questions was held on September 22, 1978. A number of commenters addressed the issue of propane deregulation in their responses. While most of these commenters favored deregulation of propane, some small marketers expressed concern as to whether access to supplies at reasonable prices could be assured in the event propane were deregulated. In addition, retail dealers' associations, independent petrochemical producers, and traditional gas utility users indicated that continued restrictions on the use of propane by new gas utility users and as synthetic natural gas (SNG) feedstock might be necessary in the event of propane deregulation.

It should be emphasized that we will not be considering the question of deregulation of propane in isolation from the question of deregulation of butane and natural gasoline as well as NGL mixtures. Thus, if we decide to propose propane deregulation after considering all comments received in response to this Notice of Inquiry, we do not intend to issue such a proposal prior to the issuance of proposals to deregulate butane and natural gasoline. We are presently developing detailed data covering butane and natural gasoline, and we may issue proposals concerning their deregulation in the near future. However, although all NGL products have related manufacturing processes, we do appreciate that there are potentially significant differences between propane, on the one hand, and butane and natural gasoline, on the other, insofar as their uses and users are concerned. For this reason, a proposal to deregulate any particular NGL product will also seek comments as to the appropriate treatment of mixed NGLs in the event some but not necessarily all NGL products are deregulated. It is also out of recognition of the potential differences between NGL products that we are seeking preliminary information from the public concerning propane in particular.

II. SPECIFIC REQUESTS FOR COMMENTS

While we are generally requesting any comments relevant in determining whether we should propose the exemption of propane from allocation and price regulations, we are specifically soliciting comments on the following issues:

A. SUPPLY, DEMAND, AND PRICE FORECASTS

1. What would short-term (1979, 1980, and 1981) and mid-term (1985) supplies of propane and product mixtures containing propane from gas plants, from refineries, and from specific sources of imports (include analysis of factors affecting the availability of such imports) be (a) if propane is deregulated, and (b) if current regulations are continued?

2. What would short-term (1979, 1980, and 1981) and mid-term (1985) demand for propane and product mixtures containing propane for residential and commercial use, for industrial use, for gas utility use, for petrochemical feedstock use, for SNG feedstock use, and for all other uses (including agricultural use) be (a) if propane is deregulated, and (b) if current regulations are continued?

3. What would short-term (1979, 1980, and 1981) and mid-term (1985) prices of propane and product mixtures containing propane at the producer level for each supply source listed in question 1 above and at the marketer level for each demand sector listed in question 2 above be (a) if propane is deregulated, and (b) if current regulations are continued? What factors affect these prices in the United States and in the world market generally?

B. ADEQUACY OF SUPPLY

4. What additional transportation, import terminal, and storage facilities are likely to be built? When would construction of these facilities be completed? What would be the supply capacities of these facilities? What regions of the country would be served by these facilities? What effect, if any, might deregulation have investment in such facilities?

5. In the event of deregulation, would propane demand by certain consuming sectors be likely to grow relative to demand by other sectors? If so, could this cause potential supply disruptions or price impacts that might warrant retention or reimposition of regulations limiting propane use by certain sectors (e.g., gas utility use, SNG use, and industrial fuel use other than process or plant protection use)?

6. In the event of deregulation, would the reduction or interruption of supplies to any class of marketer, class of consumer, or any region of the country be likely? If so, why might such a reduction or interruption occur?

C. PROFITABILITY AND COMPETITION

7. What were the May 1973 profit margins for each level of the marketing chains of integrated marketers and independent producers and marketers? What are the current margins for each of these marketers? What would the short-term (1979, 1980, and 1981) and mid-term (1985) margins for these marketers be (a) if propane is deregulated, and (b) if current regulations are continued?

8. How viable are small and independent marketers currently in maintaining a competitive position with respect to larger mar-

keters? How would this situation be affected, if at all, by deregulation?

D. RATE STRUCTURES

9. Propane price rate structures appear in some instances to increase the unit cost to consumers as consumption decreases. How widespread are quantity discounts, declining block rates, and other propane rate structures which involve a lower per unit cost to larger consumers? What factors contribute to the use of such price schedules? Since in many cases the structuring of rates to afford preferences to larger consumers is a continuation of business practices that existed in May 1973, what effects might deregulation of propane have on prices paid by various consumer classes?

10. What effects on energy conservation efforts by consumers would rate structures which lower the unit cost of propane as consumption increases have (a) if propane is deregulated, and (b) if current regulations are continued? What action, if any, can and should we take to remove any such disincentives to energy conservation (a) if propane is deregulated, and (b) if propane is not deregulated?

11. With regard to questions 9 and 10 above, would it be feasible to require that a single rate structure be used in all sales to determine that portion of a seller's charge which is attributable to such seller's product costs? If so, should separate invoicing be required in sales to end-users to distinguish that portion of the price attributable to the seller's product costs from that portion of the price attributable to nonproduct costs?

III. COMMENT PROCEDURES

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this Notice of Inquiry. All comments should be submitted by 4:30 p.m., e.s.t., April 6, 1979 to the Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-79-3, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Comments should be identified on the outside envelope and on documents submitted with the designation "Propane Deregulations—Notice of Inquiry," Docket No. ERA-R-79-3. Fifteen copies should be submitted. All comments received by the ERA will be available for public inspection in the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Any information or data you consider to be confidential must be identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

Issued in Washington, D.C., January 30, 1979.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

[FR Doc. 79-4170 Filed 2-2-79; 3:20 pm]

